Case and Comment
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The Lawyer as a Citizen

BY HON. ORRIN N. CARTER

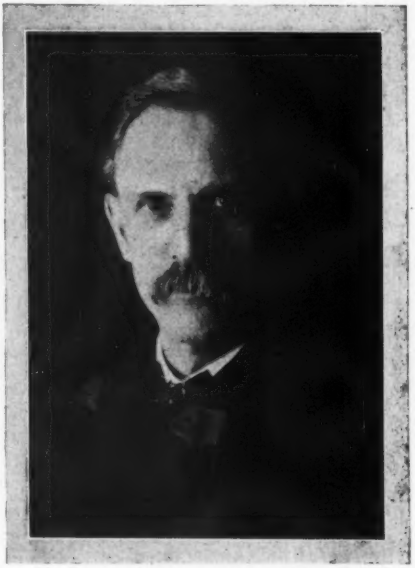
Chief Justice of the Supreme Court of Illinois

THE lawyer's responsibility to society equals that of any other citizen. His education and experience naturally fit him to advise his fellow citizens upon social and public questions. President Hadley, of Yale, is quoted as saying that the three masterful professions are journalism, finance, and politics. While it is not my purpose here to discuss the law as a profession, it is not improper to say that I believe it to be as masterful as any; that the individual lawyer may be as important a factor in his practice as the journalist, the politician, or the financier. The profession of the law has only flourished in free countries. While it has always been sharply criticized, and lawyers have frequently been called parasites on society, —or at the best necessary evils,—in view of the part they have played in the struggle for constitutional freedom this popular view is not accurate. If that view were true we ought to find those nations where there are few or no lawyers the most peaceful, orderly, and prosperous. Just the opposite is true. In a Magazine article in 1904 it was stated that China had no lawyers; that in Russia the proportion of lawyers to population was 1 to 31,000, in Germany 1 to 8,700, in France 1 to 4,100, in England 1 to 1,100, and in the United States 1 to 700.

As civilization advances, lawsuits supersede the wager of battle in settling private controversies. A little book that has attracted much attention lately, Ihering's "Struggle for Law," has for its central thought that "the end of law is peace." The courts are established to administer justice, to be the refuge of the innocent and distressed; to reconcile all men to the authority of the law as the legitimate arbiter of every controversy. Society is growing more complex and so necessarily must the law grow; but it must at the same time become more practical, more human, and more attentive to the interests of the entire community. This cannot be done unless lawyers with high ideals as the ministers of justice assist in its administration.

What are the lawyer's responsibilities and duties as a citizen? He is necessarily learned in the law. He is called upon to advise people in all conditions of life on a great variety of problems. No other profession and no other person is so fitted by experience to know the points of view of the various members of society; to fairly weigh their prejudices and place himself in the position of those he advises. His business keeps him out of the rut into which many are apt to fall. The advice of a person of narrow experience, no matter how just or honest he may be, is often absolutely worthless

to those in other lines of work, and that means to the public generally. By reason of this experience and learning there rests upon lawyers great duties and responsibilities to assist in shaping public opinion and public affairs. Eighty years ago De Tocqueville said that in America there were no nobles nor literary men; that the people were liable to distrust the wealthy; that lawyers therefore formed the highest political class, exercising powerful influence upon the formation of law and its execution. Mr. Bryce, writing sixty years later and comparing America with the America of De Tocqueville's time, declared that the bar counted for less as a guiding and restraining power, tempering the crudity of democracy by its attachment to rule and precedent, than formerly; that in these later years the lawyers did not seem to be so much of a distinct professional class, but were to a greater extent business men,—a part of the organized system of industrial enterprises.



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HON. ORRIN N. CARTER

Special Interests.

One of the leaders of the bar only last year argued in an address that the lawyer had lost the esteem and confidence of the public because he was thought to represent special interests,—the great corporations, rather than the interests of the public. Unfortunately this is too often the fact. It is a well-known biblical doctrine that "no man can serve two masters." Certainly he cannot do this and have the confidence of both. The public duties of a lawyer are different from those of any other citizen,—not because he has greater legal rights, or his vote counts for more—but because he has greater opportunities. In times past the lawyer in every community has been the leader in the discussion of moral, social, and industrial problems coming before the people for settlement. His obligation was and is greater in this respect, because in its discharge he is subject to less restraint from public opinion, by loss of income or otherwise, than the members of any other business or profession. In the earlier years of our country's history the lawyer's practice was such that he was never compelled to obey the whim or caprice of his clients in public matters. The prejudice of the community did not increase or lessen his business. More than anyone else, he could be independent in the position he took upon public matters. His business not only permitted this, but the spirit of his profession demanded it. He said and did what he believed to be right,

> "Caring naught for what vengeance the mob hath in store
> Be that mob the upper ten thousand or lower."

I hope the lawyer's position in society may always be such that he can follow that course.

Procedural Reform.

The lawyer as a citizen should lead in bringing about necessary changes in the law affecting the administration of justice. There may be some truth in the charge that the law tends to become fossilized and procedure technical; that it is easier to follow precedents than it is to adapt decisions to the special facts of each case. The lawyers must apply common sense to outworn rules of prac-

tice. The fundamental principles of justice are always the same, but as wrong assumes new and varied forms, so must these principles be adapted to meet the new and changing conditions. An especial responsibility rests upon the lawyer to see that changes along this line are made.

Unofficial Public Service.

As great services as have ever been performed in the public interest in this country have been rendered by lawyers who were not public officials. The most effective weapon in bringing order out of chaos in those troublous years after the Revolution were the writings of three lawyers,—Hamilton, Madison, and Jay,—in the Federalist. Without the influence of that work the Constitution would never have been adopted, and the thirteen colonies would have remained as separate, discordant, and warring commonwealths. In our own time David Dudley Field and James C. Carter are two among the many examples that might be named of lawyers who, outside of their professional duties, have served notably as leaders in helping to settle the great social, industrial, and political problems of the day in the interests of all the people. Every one of us can call to mind lawyers of our personal acquaintance who have in a greater or smaller way performed public service of this character.

He is a poor representative of the legal profession who cares for nothing but his fees and has no other standard than personal success. Pecuniary gain was not always the incentive to action in the earlier days of our profession in this country. James Otis resigned a highly paid public position as representative of the Crown, and gave his services in the trial of the writ of assistance cases in Boston in 1761; Patrick Henry acted in a similar manner in the "parsons' case" two years later in behalf of the freedom of the people. This higher incentive moved many lawyers in that great struggle for the freedom of the slaves and the maintenance of the Union. It still moves lawyers of to-day to aid righteous but unpopular causes, and to protect the individual from the tyranny of public passion and prejudice.

Lawyers, being students of the principles of right and justice, should ever be imbued with a desire to follow out those principles. The lawyer who stands for the true ideals of his profession must necessarily sustain a most important relation to the public. By reason of his education and habits of thought, his close contact with the forces of progress, his acquaintance with men of various conditions and opinions, he is fitted to render the highest service to society. As his opportunities are great, so should be his influence.

> "As one looks about him at the infinite complexities of the modern problems of life, at the great tasks to be accomplished by law, at the issues of life and happiness and prosperity involved, one cannot but realize how much depends upon the part the lawyer is to play in the future politics of the country."—*Hon. Woodrow Wilson.*

Civic Duties of the Lawyer

BY HON. CHARLES S. WHITING

Justice of the Supreme Court of South Dakota

THE instruments of government are laws. The form of government and the source from which the laws may emanate are of far less importance than the nature of the laws which organized society may put into force,—better a despot enforcing just laws, than a democracy whose laws are unjust or one too weak to enforce her laws. But having confidence in the capacity of our people for self-government, and believing that a government from below, from the people themselves (when such people are intelligent and moral), tends to the enactment and enforcement of laws more just to all classes of society, more certain to be founded upon the brotherhood of man,—in a word, having faith in the strength, intelligence, and right purpose of our people as a whole,—we believe in the wisdom of our form of government and trust in its perpetuity.

Imperfection of Laws.

In order that a law may win respect and be of force, its spirit must beat in unison with the public pulse and must reflect the public conscience. We can only build for to-day. Human laws are the resultant derived from a combination of the Divine or moral laws, the laws of nature and human experience, as such resultant has been evolved by human intellect influenced by the virtues of the ages; and, as a stream can rise no higher than its source, human laws must of necessity be imperfect, and can only tend to perfection as mankind grows more enlightened and becomes endowed with greater virtues and higher ideals. But, while a lawmaker of infinite wisdom and virtue might be able to make laws perfect for the age in which he lived, such laws would soon become unfit as mankind advanced; a law to be perfect for the purposes for which framed, must conform to the ideas of the people for whom it is framed,—must conform to their experience—must seem to them right and just; laws must keep in touch with the forward trend of civilization but without any attempt to mold the people, that is, the average among the people, to the law; laws are made for the people, and not people for the laws. . . .

Evolution of Law.

Let us not think that our fathers builded for all time; the laws of a century—yes, of a generation ago—are unsuited for to-day, as will be our laws for the generations to come,—yet the law of to-day should be the best conceivable for this day and age. But though laws may come and laws may go, still, as the fundamental principles found in the canoes of the ancient mariners are recognized in the modern floating palaces, so, during all the changes that have or ever shall take place in human laws, there will be found running through them, if they be just, certain fundamental principles based upon moral and natural laws,—and, just as a building would crumble and fly to pieces if the law of gravity should cease to exist, so must the whole system of human laws crumble if these natural and moral laws cease to have recognition. One able jurist has written: "Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government."

Such has always been the evolution of law, a continuous change and growth to

meet the evolution of things social, political, and economic.

A Revolutionary Age.

For a generation past, we have been living in an age, not of evolution,—an age, if not of revolution, one of entire reconstruction in things social and economic,—an age when changes in things political have failed wholly to keep pace with the changes in things social and economic,—an age when laws—the instruments of government—have been sorely tried and too oft found wanting. When we contemplate the record of progress during the past half century, and compare it with the centuries gone before, we stand amazed; and when we realize, as everyone to-day must, that the tremendous change now going on is but the forerunner of even greater changes about to come,—we may well tremble for the future, and ask ourselves if it be possible for human laws to so keep pace with this reconstruction of things social and economic, as to preserve the rights of society and of the individual. That man is blind indeed who calls out for the laws of our fathers, who even holds the fundamental laws of our land sacred, and not to be changed to meet changed conditions; such an one would cut his grain with the hand sickle, thresh it with a flail, grind it in the hollow of a rock, and still expect to fill the hungry mouths of the increasing multitudes. Portentous questions are confronting us,—conditions never dreamed of by the founders of our government have arisen,—we are confronted with problems needing the highest patriotism, the keenest intellects, that they may be rightfully solved,—and they must be solved or our land cease to be the land of liberty. The people are thoroughly awakened to the dangers, and there is every hope that a better era is dawning. The time and conditions cry aloud, not for the demagogue nor for the muckraker,—though each of these has undoubtedly performed a useful purpose in opening the eyes of the people,—but they call for the broad statesman—the wise leader — the true citizen.

HON. CHARLES S. WHITING

What are a few of the questions to be met and answered by the people of our day?

Vast fortunes have come into private hands through the possession and control of nature's resources, which resources a beneficent Creator had bestowed upon mankind. Those fortunes, possessed of tremendous power for good or evil, stand a continual menace to the very existence of a free government, startling evidence of which is too often being revealed in our legislative halls both state and Federal. We at last fully realize the folly that has worse than wasted these resources of our land, and a cry has gone up demanding that what is left be conserved for the people to whom it of right belongs. We are not demanding the conservation of the treasures of the mines, the streams, and the forest, merely,—we are demanding the conservation of humanity itself. Wise laws are needed guarantying pure sustenance for our bodies,—protecting the childhood of our land from disease, from sin, and from vice. Changed social and economic conditions have driven the women of our land—yes, even the children—out into the mart, the factory and the field, there to contend with man in the struggles of life. We need better laws protecting the child from labors unfitted for its age,—protecting our womanhood from crime

and from labor unsuited her sex, so that she may properly fulfil her most sacred and holy office; we need wise laws restricting marriage, thus insuring physical and mental strength to the coming generations.

Employer and Employee.

In the days of our grandparents, employer and employee dealt with one another on a plane of equality. Then came aggregated capital, and made of the employee but a cog in a great machine, useless except in the place for which trained, and he became the helpless victim of organized greed and avarice. Then labor organized and stood face to face with organized capital; conflicts were inevitable, hence the strike and lockout with loss and suffering to the participants and inevitable injury to the public,—a condition not to be tolerated under a just government,—a condition for which there must be and certainly is some remedy. Closely connected with, and in fact a part of, this great problem of employer and employee, comes the solution of that most important question of who shall best bear the risks incident to employment.

Corporations.

There is need of an entire reconstruction of the laws designed for the control of those aggregations of wealth known as corporations,—children of the law, created not that they might become masters of mankind, but that they should be useful servants. Modern society cannot exist without them, and we should not seek their destruction, but rather their control for good. Woodrow Wilson has well compared them to automobiles; he says it is not the automobiles that have created the prejudice so often found against them, but that it is the joy-rider. Let us get after the joy-riders who use corporations as a means for destroying the rights of the people. Let the great men of today, those Napoleons of finance, who, whether within or without the corporate entity, control its acts, be taught that they must use the gifts bestowed upon them for the benefit, and not the injury, of their fellow men.

Until of late it has been taught that the law of competition was the unerring and perfect adjuster of rights between man and man, and its establishment a necessity for the welfare of society. How far shall this law give way to the law of monopoly, especially in telephone, transportation, and some other enterprises? But lately this question has been deeply agitating the people of our greatest city, in connection with her underground transportation. Monopoly also is a dangerous master when controlled by selfish greed,—but, as a servant, may be of great value to mankind. Shall all combinations and trusts in restraint of trade be made unlawful, or shall we recognize as lawful, a "reasonable" restraint upon trade?

Modern invention and discovery has eliminated time and distance so that the whole nation to-day is more closely bound and intimately related in matters economic, than were the people of a county in the days of a century ago. Is it best, under existing conditions, that there be two separate sources of legislation controlling commerce, or has the time arrived when intrastate commerce has become so inseparable from interstate that the regulation of all should be left to the Federal government—and, as an incident thereto, there also be vested in the Federal government far greater powers over corporations?

What public enterprises shall organized society take over into its ownership and management,—over what others shall it exert mere control,—and in whom shall such control be vested? What changes are needed in our fundamental laws to meet the changed conditions of to-day?

Unsolved Problems.

How shall we make those who are best able to bear the expense of government, bear their share thereof? All must concede that present methods are unscientific and fail to accomplish the desired object.

We glorify our ancestors for their far-seeing statesmanship as evidenced by the scheme of government evolved by them, but to-day we are facing a problem greater than any they ever dreamed of,—the local government of the millions gathered within our great municipalities.

The spirit of reform is abroad in the

land; the initiative and referendum have come that the people may exercise direct control over the legislator and legislation; through the recall a restraining influence is had upon the administrator; is it best, through the recall or through any other scheme that may be evolved, to attempt to control or restrain the judge upon the bench?

Establish Justice.

Those are a few of the questions demanding solution at the hands of the people, none can escape responsibility, but upon us, who have been trained as specialists in that profession which should best fit us for its proper discharge, this responsibility rests especially heavy. In this work of reconstruction we are entering upon a second formative period in our country's history. During the first, our lawyers won lasting renown, not only as officers of the court in the interpreting and administering of laws, but as statesmen in the halls of legislation, upon the bench, at the bar, and in the public forum. Today the great danger to society lies in the monetization of intellect. It would seem that, as a people, we have almost gone money mad. Let us get back to the doctrine that humanity is more to be treasured than money. Let our profession be, as it should, the controlling force in the forum and in the legislative halls, and let those halls be made indeed "halls of justice." Sharswood said: "How great is the influence of the lawyers as a class upon legislation! Let any man look upon all that has been done in this department and trace it to its sources. He will acknowledge that legislation, good or bad, springs from the bar." Let all remember that, wherever we go, the oath we have taken goes with us; that, at all times and in all places, we are first and foremost the sworn officers of the law bound to work for the ends of justice. There should be absolute confidence in those who make, in those who interpret, and in those who administer the law. All are engaged in the one great work,—establishing justice upon earth. There is not a phase of our nation's life into which our profession does not enter, and our influence must always be most potent. Away with the too prevalent idea that society lacks confidence in us; while it is true that there has always been and probably always will be an impression among some that there is a certain degree of rascality inseparable from the practice of our profession, the people as a whole have confidence in our integrity and will gladly give us all merited power as law-makers. We would not disparage those of other professions, we need them as they need us; but they of necessity welcome our aid, recognizing, as they must, that our knowledge of the law, past and present, fits for leadership in this work of to-day, and especially in view of the great constitutional questions involved in necessary legislation.

And above all let us not forget that, when we are performing our ordinary duties as officers of the court, we still retain all our responsibilities and duties as citizens; that man is false to society; false to his oath as an attorney, and false to his God, who allows the gifts bestowed upon him to be used in knowingly seeking to mislead the court or jury, and to obtain for a client other than what rightfully is his. . . .

What a revolution for good might be wrought, if every member of our profession would use his best efforts toward the enactment and enforcement of laws designed only to the securing of justice between man and man; if there could be found none—whether upon the bench or at the bar, in legislative halls or private life—who would knowingly allow his talents to be used for the protection of any man or body of men guilty of a private or public wrong! In closing I would say, paraphrasing the words of the immortal Lincoln, "Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution, by the blood that has consecrated many a battlefield of the southland by the struggles and privations of our ancestors, to keep inviolate the sacred heritage that came to us,—never to violate, in the least particular, the laws of the land, never to tolerate their violation by others, and to strive to improve and strengthen them at all times." Thus and only thus can we fully discharge the duties we owe as members of a social organization designed for our own uplifting.

The Soldier's Faith

BY HON. OLIVER WENDELL HOLMES

Associate Justice of the Supreme Court of the United States

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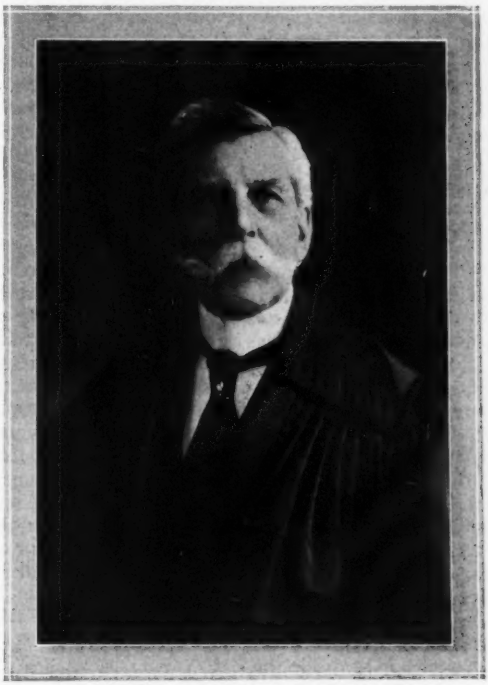
[Ed. Note.—The volunteer soldier, lawyer or layman, ventured all in the performance of one of the primary duties of a citizen,—military service. This splendid tribute to the men of 1861 is from the pen of one who lived with them the faith of which he speaks.]

BEHIND every scheme to make the world over, lies the question, What kind of a world do you want? The ideals of the past for men have been drawn from war, as those for woman have been drawn from motherhood. For all our prophecies, I doubt if we are ready to give up our inheritance. Who is there who would not like to be thought a gentleman? Yet what has that name been built on but the soldier's choice of honor, rather than life? To be a soldier or descended from soldiers, in time of peace to be ready to give one's life, rather than to suffer disgrace, that is what the word has meant; and if we try to claim it at less cost than a splendid carelessness for life we are trying to steal the good will without the responsibilities of the place. We will not dispute about tastes. The man of the future may want something different. But who of us could endure a world, although cut up into 5-acre lots and having no man upon it who was not well fed and well housed, without the divine folly of honor, without the senseless passion for knowledge out-reaching the flaming bounds of the possible, without ideals the essence of which is that they never can be achieved? I do not know what is true. I do not know the meaning of the universe. But in the midst of doubt, in the collapse of creeds, there is one thing I do not doubt, that no man who lives in the same world with most of us can doubt, and that is that the faith is true and adorable which leads a soldier to throw away his life in obedience to a blindly accepted duty, in a cause which he little understands, in a plan of campaign of which he has no notion, under tactics of which he does not see the use.

Most men who know battle know the cynic force with which the thoughts of common sense will assail them in times of stress; but they know that in their greatest moments faith has trampled those thoughts under foot. If you have been in line, ordered simply to wait and to do nothing, and have watched the enemy bring their guns to bear upon you down a gentle slope, have seen the puff of the firing, have felt the burst of the spherical case-shot as it came toward you, have heard and seen the shrieking fragments go tearing through your company, and have known that the next or the next shot carries your fate; if you have advanced in line, and have seen ahead of you the spot which you must pass where the rifle bullets are striking; if you have ridden by night at a walk toward the blue line of fire at the dead angle of Spottsylvania, where for twenty-four hours the soldiers were fighting on the two sides of an earthwork, and in the morning the dead and the dying lay piled in a row six deep, and as you rode have heard the bullets splashing in the mud and earth about you; if you have

been on the picket-line at night in a black and unknown wood, have heard the spat of the bullets upon the trees, and as you moved have felt your foot slip upon a dead man's body; if you have had a blind fierce gallop against the enemy, with your blood up and a pace that left no time for fear,—if, in short, you have known the vicissitudes of terror and of triumph in war, you know that there is such a thing as the faith I spoke of. You know your own weakness and are modest; but you know that man has in him that unspeakable somewhat which makes him capable of miracle, able to lift himself by the might of his own soul, unaided, able to face annihilation for a blind belief.



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HON. OLIVER WENDELL HOLMES

From the beginning, to us, children of the North, life has seemed a place hung about by dark mists, out of which come the pale shine of dragon's scales, and the cry of fighting men, and the sound of swords. Beowulf, Milton, Dürer, Rembrandt, Schopenhauer, Turner, Tennyson, from the first war-song of our race to the stall-fed poetry of modern English drawing rooms, all have had the same vision, and all have had a glimpse of a light to be followed. "The end of worldly life awaits us all. Let him who may, gain honor ere death. That is best for a warrior when he is dead." So spoke Beowulf a thousand years ago.

"Not of the sunlight,
Not of the moonlight,
Not of the starlight!
O young mariner,
Down to the haven,
Call your companions,
Launch your vessel,
And crowd your canvas,
And, ere it vanishes
Over the margin,
After it, follow it,
Follow the gleam."

So sang Tennyson in the voice of the dying Merlin.

When I went to the war I thought that soldiers were old men. I remembered a picture of the revolutionary soldier which some of you may have seen, representing a white-haired man with his flint-lock slung across his back. I remembered one or two living examples of revolutionary soldiers whom I had met, and I took no account of the lapse of time. It was not until long after, in winter quarters, as I was listening to some of the sentimental songs in vogue, such as—

> "Farewell, mother, you may never
> See your darling boy again,"

that it came over me that the Army was made up of what I now should call very young men.

. . . . . .

The truth is that war is the business of youth and early middle age. You, not we, would be the soldiers of another war, if we should have one, and we speak to you as the dying Merlin did in the verse which I just quoted. Would that the blind man's pipe might be transfigured by Merlin's magic, to make you hear the bugles as once we heard them beneath

the morning stars! For you it is that now is sung the Song of the Sword:

"The War-Thing, the Comrade,
Father of honor
And giver of kingship,
The fame-smith, the song master.
. . . . . .
Priest (saith the Lord)
Of his marriage with victory.
. . . . . .
Clear singing, clean slicing;
Sweet spoken, soft finishing;
Making death beautiful,
Life but a coin
To be staked in the pastime
Whose playing is more
Than the transfer of being;
Arch-anarch, chief builder,
Prince and evangelist,
I am the Will of God:
I am the Sword."

War, when you are at it, is horrible and dull. It is only when time has passed that you see that its message was Divine. I hope it may be long before we are called again to sit at that master's feet. But some teacher of the kind we all need. In this snug, over-safe corner of the world we need it, that we may realize that our comfortable routine is no eternal necessity of things, but merely a little space of calm in the midst of the tempestuous untamed streaming of the world, and in order that we may be ready for danger. We need it in this time of individualist negations, with its literature of French and American humor, revolting at discipline, loving flesh-pots, and denying that anything is worthy of reverence,—in order that we may remember all that buffoons forget. We need it everywhere and at all times. For high and dangerous action teaches us to believe as right, beyond dispute, things for which our doubting minds are slow to find words of proof. Out of heroism grows faith in the worth of heroism. The proof comes later, and even may never come. Therefore I rejoice at every dangerous sport which I see pursued. The students at Heidelberg, with their sword-slashed faces, inspire me with sincere respect. I gaze with delight upon our polo players. If once in a while in our rough riding a neck is broken, I regard it, not as a waste, but as a price well paid for the breeding of a race fit for headship and command.

We do not save our traditions, in this country. The regiments whose battle flags were not large enough to hold the names of the battles they had fought vanished with the surrender of Lee, although their memories inherited would have made heroes for a century. It is the more necessary to learn the lesson afresh from perils newly sought, and perhaps it is not vain for us to tell the new generation what we learned in our day, and what we still believe. That the joy of life is living, is to put out all one's powers as far as they will go; that the measure of power is obstacles overcome; to ride boldly at what is in front of you, be it fence or enemy; to pray not for comfort, but for combat; to keep the soldier's faith against the doubts of civil life, more besetting and harder to overcome than all the misgivings of the battlefield, and to remember that duty is not to be proved in the evil day, but then to be obeyed unquestioning, to love glory more than the temptations of wallowing ease, but to know that one's final judge and only rival is one's self: with all our failures in act and thought, these things we learned from noble enemies in Virginia or Georgia or on the Mississippi; these things we believe to be true.

"'Life is not lost,' said she, 'for which is bought endlesse renown.'"

We learned also, and we still believe, that love of country is not yet an idle name.

"Deare countrey! O how dearely deare
Ought thy remembraunce, and perpetuall band
Be to thy foster-child, that from thy hand
Did commun breath and nouriture receave!
How brutish is it not to understand
How much to her we owe, that all us gave;
That gave unto us all, whatever good we have!"

As for us, our days of combat are over. Our swords are rust. Our guns will thunder no more. The vultures that once wheeled over our heads are buried with their prey. Whatever of glory yet remains for us to win must be won in the council or the closet, never again in the field. I do not repine. We have shared the incommunicable experience of war; we have felt, we still feel, the passion of life to its top.

Some years ago died the old colonel of my regiment, the Twentieth Massachusetts. He gave our regiment its soul. No man could falter who heard his "Forward, Twentieth!" I went to his funeral. From a side door of the church a body of little choir-boys came in like a flight of careless doves. At the same time the doors opened at the front, and up the main aisle advanced his coffin, followed by the few gray heads who stood for the men of the Twentieth, the rank and file whom he had loved, and whom he led for the last time. The church was empty. No one remembered the old man whom we were burying, no one save those next to him, and us. And I said to myself, the Twentieth has shrunk to a skeleton, a ghost, a memory, a forgotten name which we other old men alone keep in our hearts. And then I thought: It is right. It is as the colonel would have had it. This also is part of the soldier's faith: Having known great things, to be content with silence. Just then there fell into my hands a little song sung by a warlike people on the Danube, which seemed to me fit for a soldier's last word, another song of the sword, but a song of the sword, in its scabbard, a song of oblivion and peace.

A soldier has been buried on the battle field.

"And when the wind in the tree tops roared,
The soldier asked from the deep dark grave:
'Did the banner flutter then?'
'Not so, my hero,' the wind replied,
'The fight is done, but the banner won,
Thy comrades of old have borne it hence,
Have borne it in triumph hence.'
Then the soldier spake from the deep dark grave:
'I am content.'

. . . . . .

Then he heareth the lovers laughing pass,
And the soldier asks once more:
'Are these not the voices of them that love,
That love—and remember me?'
'Not so, my hero,' the lovers say,
'We are those that remember not;
For the spring has come and the earth has smiled,
And the dead must be forgot.'
Then the soldier spake from the deep dark grave:
'I am content.'"

THE BAND IN THE PINES.

Oh, band in the pinewood, cease!
Cease with your splendid call;
The living are brave and noble,
But the dead were bravest of all!

They throng to the martial summons,
To the loud, triumphant strain
And the dear bright eyes of long dead friends
Come to the heart again!

They come with the ringing bugle,
And the deep drum's mellow roar!
'Till the soul is faint with longing
For the hands we clasp no more!

Oh, band in the pinewood, cease!
Or the heart will melt in tears,
For the gallant eyes and the smiling lips,
And the voices of old years!

—John Esten Cooke

Americanism

By GUY CARLETON LEE

If we reject socialism, communism, individualism, and monarchism, as plans for the bettering of the condition of society, what have we left? I can answer you: We have something better than communism as it has been practised; better than socialism as to-day taught; better than individualism as it is urged by the class; better than monarchism, always a failure. What we have is so powerful that it will overcome existing evils and cure discontent; it is so powerful that it will remove the cause of unrest and give to the people the justice they deserve,—it is Americanism.

Yes, not in a theory of another day and of another country can we find complete relief in this our time of need; but we can turn confidently to Americanism, and in it find the salvation of the nation. How is Americanism made up? From socialism it takes its fine regard for the rights of the minority, the weak, the inefficient. It takes also from socialism its theory that society, as such, deserves the first consideration of its members; its formulary that we owe to our neighbors duties the like of which we consider that they owe us,—honesty, kindness, love. These things we take from socialism, for they are abiding principles of social happiness, and man is a social creature.

From individualism we take the bold initiative that is not bound by tradition, but is continually reaching out to labor in new fields of endeavor. We take, too, the desire to better the condition of the individual, for from such desire springs material and intellectual advancement. We take also, but under control of the state, its systems of rewards and punishments attending the success or failure of personal effort. From monarchism we take the prompt and strict enforcement of law, the effective ownership of public utilities. This composite—this blending of the best from all theories of government—is Americanism; and when the people awake to the full threat of the danger that confronts them, to the full force of the strength that lies within them, we shall see them triumphant through Americanism.—Excerpt from lecture, "When the People Wake."

The Lawyer Knights of Driftwood

A Reminiscence of the Vanished Frontier

BY WILLIAM D. TOTTEN

Of the Seattle (Wash.) Bar

In early days at Driftwood,
Near the roaring Arkansaw,
A dozen lawyers, more or less,
Essayed to practice law.
A client with a dollar then,
Was very seldom seen,
And terms of court were always short,
And few and far between.

The military characters,
And judges on display,
Patrolled the streets for business
And hustled every day.
They all enjoyed their titles with
Expansion of the chest,
For bluff was half the battle in
The wild and woolly West.

Each lawyer wore a sombrero,
With brim extremely wide,
And carried loaded Forty-Fours,
Concealed upon the side.
Sometimes they grew cantankerous,
And drew and blazed away,
And mixed in hot encounter,
In a riotous affray.

And some peculiar barristers
This frontier town could boast
With pioneers from every state,
From east to western coast.
"Judge Bangem" drawled and stammered,—
He was newly from the plains,
A shooting up the Indians,
And planting their remains.

"Judge Smashem" from Missouri
Took no "slack" from anyone,
In fights he was a dead shot,
And a row for him was fun.
The "Red Eye" he could punish,
Was admitted very great,
In quantity beyond a guess,
Or human estimate.

"Judge Skinem" had an office,
Never open through the day,
Also a splendid library,
Kept merely for display.
He spent his time at poker,
And though petty suits he tried,
His business as a lawyer
Was a venture on the side.

And Skinny Bill, a lawyer ill,
Was nearly 6 feet high;
With sunken cheek and manner meek
He came out West to die.

He often coaxed the druggist
With a sad, persuasive voice,
To fill a few prescriptions
For some liquor strong and choice.
That he could hoard in demijohn
Or secret jug or can,
While helping his consumption
Under Prohibition's ban.

One day at a convention
A grand argument was made
By one of the aforesaid,
And he called a spade a spade.
He challenged his opponent
And he told him to his face
He was a silly bonehead
And a shyster in disgrace.

This meant a time for killing,
And the glistening weapons shone,
Like razors in the sunshine,
Newly polished on a hone.
There was tumbling over benches;
There was rushing for the door,
As guns were flashed a popping,
On the Bar Convention floor.

No soul passed on to glory,
But a bullet pierced the leg
Of him who made the gun play,
Seedy Major Blackstone Begg.

He was carried to a doctor,
Who was loafing by the way,
And then the Bar Convention
Stood adjourned without delay.

Now Begg was not an angel,
And his Southern blood was hot,
To think he was the only
Bold insurgent that was shot.
So when he well could hobble out,
He made a long complaint,
And by a proper warrant
Put his foe in harsh restraint.

He charged that his assailant,
Colonel Chitty Littleton,
With malice long aforethought,
Had been reckless with his gun,
And pulled a certain trigger
On a pistol then and there,
And certain leaden bullets,
Sent a tearing through the air,
In most uncertain manner,
To deponent's certain knee;
Who lingered long a suffering,
In sore uncertainty.

That with a carbine, rifle,
Blunderbuss, and arms and force,
And divers guns and cannon,
He pursued a wicked course,
Affiant beat and wounded
And did otherwise ill treat
And mangled and unraveled him
From cranium to feet,
To wit, that said assailant
Was a somewhat dangerous man,
And that he should be punished in
The district court of Kan.

The culprit was to answer
When the petty jury sat;
The prosecutor said that he
Would find where he was at.
He'd detain him and arraign him,
Till he got his hide, and then
Would chide him and deride him,
And deport him to the pen.

Out West they always hung a thief,
For stealing of a horse;
But when a fellow killed a man,
They let him out of course.
Hence every one in confidence,
Declared the jury'd hang,
Instructed by his Honor,
Genial General Justice Whang.

There was a special session,
Of the bar in happy mood,
With warm, hilarious feeling,
For the punch was extra good.

The major said the colonel
Was a gentleman by birth,
Of honor, highest character,
A man of sterling worth.
The colonel craved the pardon
Of the major gallantly,
And said he never meant to shoot
Nor do him injury,
That when the trusty gun went off,
A storm was on his brain.
The major hugged the colonel,
Saying "your defense is plain."

And so they smoothed the wrinkles down
Upon the face of war,
For not a note of discord,
Was allowed the truce to mar.
And brothers Begg and Littleton
Forgot their ancient wrongs,
And "Auld Lang Syne" together sung
And other favorite songs,—
Remembered they were human,
With the common faults of men,
And o'er the brimming tin cups swore,
They'd be good friends again.

And when the shooting case was called,
And the indictment read,
Friend Littleton he failed to plead,
And Begg most blandly said:
"As counsel for the prisoner,
I'm serving without cost;
I move his prompt dismissal,
May this action be 'nolle prossed.' "

The prosecutor said, " 'Tis well,"
The court gave his assent.
And thus was closed the famous case,
With everyone content.
And when we think of chivalry,
And knights of great renown,
Let us remember bench and bar
Of good old Driftwood town.

The Duty of the Lawyer in the Conflict Between the People and Leaders of Organized Wealth

BY HENRY J. FEHRMAN

Of the Chicago Bar

WHETHER the lawyer be obscure or eminent, his permanent value to society is determined by the measure of his usefulness. The mere fact that he is a member of an honorable profession will not necessarily reflect credit upon him, for each individual lawyer's profession is peculiarly his own. This must be true of any pursuit where, as in the practice of law, action depends so largely and vitally upon matters of conscience. The scope and influence of any lawyer's activity is differentiated from that of any other lawyer in the same respect and to the same extent that their individual consciences differ. The result is that two lawyers, although members of the same profession, are, in fact, distinct professional units, each making for himself a separate and different standard by which he will be judged. Each lawyer must rest on the standard which his own individual activity, directed by his conscience, has established; and it is a notorious fact that those lawyers who are content with a professional standard less than usefulness—that those who put a premium upon chicanery—are forgotten in the din of honest toil, and their lives flicker out in the dismal graveyard of failure.

The Lawyer's Opportunity.

In the present conflict between the people and the comparatively few men who control the industrial enterprises of the country, there is an opportunity for the lawyer to render to society a useful service, and one fraught with great responsibility. There is too much at stake for the bar to act hastily or rashly. Many of the institutions of our free government are more or less concerned with, and will be affected by, the settlement of the industrial problems now before us. These problems call for a sane and permanent solution, not merely for a superficial glossing. The opportunity here presented to the legal profession is to trace carefully the history of these problems back to first causes, and then it will have discovered a line of fundamental duty. Like the physician who diagnoses before he prescribes, the lawyer must think before he acts; and just as the surgeon's hand is governed somewhat by certain fundamental laws of physiology, the lawyer's duty must be determined to a certain extent by that fundamental principle of free government that has sounded in a clear note since the adoption of our Constitution; which is, in effect, that if our institutions are to prevail against the corroding test of time, industrial liberty, social equality, and political freedom must be assured to every citizen from the highest king of finance to the humblest artisan.

The Lawyer as Arbiter.

At a first glance what are the most obvious phases of this conflict between the people and organized wealth which the legal profession must recognize? On the one side voters by the million, on the other side dollars by the billion; over here a people claiming oppression, over there a few men denying guilt; over here large numbers asking an industrial basis of free competition, over there a small

number asserting the right to combine and eliminate competition; over here the many dissatisfied and murmuring because they think the few over there have profited unjustly at their expense, and opposing the former are the few who claim that every dollar of their stupendous fortunes is the reward of individual industrial sagacity, and the legitimate profit of far-seeing investment. Each side is determined and each side is strong. The one side is backed by the people; the other, practically, by the wealth of the nation. Judging from these facts there can be no mistake but that the issue is drawn; and with the perpetuity of the Republic in the balance, the clouds of a mighty conflict are lowering. It is to this field of possible danger that all the traditions of an honorable profession demand that the lawyer of the twentieth century take a stand; not as a soldier of the people to wreak revenge, and not as a soldier of the moneyed class to oppress; but rather as an arbiter between the two, giving to the cause his best and most conscientious efforts as an exponent of liberty under the law, and of law equal to all the demands of justice. The lawyer should be the defender of personal rights, the leader in the struggle for enlarged liberty and the advancement of society.

HENRY J. FEHRMAN

The community can reasonably place upon the lawyer this responsibility. His training fits him especially for this work. His early legal training teaches him patient research, and develops both the memory and the reasoning faculties. A knowledge of the theory and practice of law is of inestimable value to one who deals with problems affecting all the people. In the end no people can prosper and attain a stability of government unless their system of law has more of good than of bad in it. Their destiny is largely in the hands of those to whom they intrust the high duty of legislation. A lawyer understands the ultimate effects of a legal system better perhaps than any other man. He presumably knows what lies back of law, what is in it and the practical result of its operation. He does not gain this knowledge without a beneficial training of all his faculties of reason and resource which, if brought to bear, should be of value in disentangling the difficult situations in which a people so often find themselves. Because of this legal training the lawyer acquires a certain mastery of problems—like the ones before us which are not without their legal aspects—that belongs to few. What is salient, far-reaching, and fundamental, the lawyer above others should be quick to see.

Aside from the fact that the legal training of the lawyer should put him in the vanguard of movements looking toward the betterment of society, he is historically the leader of men and the promulgator of progressive measures. The Dracos and Papinians, the Blackstones and Mansfields, the Marshalls and Storys, the Websters and Curtises, have been the guiding geniuses and the recognized defenders of sound and conservative progress. The Greek historian, Diodorus Siculus, tells us in his "Bibliotheca" that the lawyer was the leader of the ancient Egyptians. The Greek and Roman civilizations, which followed that of the Egyptian, owe much to the influence of the lawyer: and we have only to recall the names of Demosthenes, Lysias, and Isocrates, of the Athenian bar; Cato, Scaevola, Crassus, Hortensius, Brutus, and the immortal Cicero under the Re-

public, and Quintilian, Pliny, and Sulla under the Empire, of the Roman bar, to find men whose names have been an inspiration to succeeding generations of lawyers, and whose fame forms the most enduring pages in Greek and Roman history. From the very dawn of civilization down through the marching centuries, wherever a people was found who had wrongs to be righted and rights to be protected, the lawyer has not only been found ready to defend them in the courts of ancient Egypt, or before the "Dicasts" of classic Athens, or in the forum of imperial Rome, or in the courts of modern America, but he has also been the leader of the people outside those same courts. The legal profession of the present century cannot be heard to say that changed conditions of life have swallowed up their prerogative of leadership. No condition of life in any country has done that. The legal erudition of our forefathers gave us our Constitution and the system of government that is the envy and admiration of the world. The man who clothed the Constitution in its true American garb, and probably more than any other man thereby made possible a successful culmination of the experiment of free government under a written constitution, was the great lawyer and jurist, John Marshall. A lawyer wrote the Declaration of Independence, declaring the equality and freedom of all men before the law. Lawyers led the fight for and against slavery which finally resulted in war; and by the hand of the immortal Abraham Lincoln, a lawyer, the Emancipation Proclamation was drafted, which cleansed this Republic of the stain of slavery, thus giving freedom to 4,000,000 men. Lawyers have so far led public opinion in this country that eighteen of the twenty-five Presidents of the United States have been members of the bar. During the first one hundred years of this Republic's existence, out of the 267 men who filled the offices of president, vice-president, and members of the cabinet, 210 were lawyers. To-day the Senate and National House of Representatives are composed of lawyers to the extent of 70 per cent. So history proves that the hand of the lawyer has guided, to a large extent, the legislative work of this country; and his genius, brain, and patriotism have formulated her policies.

Relation to Industrial Issues.

Again, the legal profession bears a primary relation to the issues between the people and the holders of great wealth. When we look at the great deals and gigantic enterprises, was it not the legal genius of the bar that made them possible? Did Carnegie, Morgan, Schwab, or Frick ever dream of a United States steel corporation? They did not. It was William Nelson Cromwell, one of the greatest living corporation lawyers, who first suggested the amalgamation or combination of the steel interests of the United States, and that suggestion culminated in the billion dollar steel trust. The famous Standard Oil Trust, of New Jersey, is not the child or octopus of John D. Rockefeller's conception. He and his friends were bewildered and appalled on the handing down of an Ohio decision discharging the original trustees of the company, but to their rescue came the keen and sagacious S. C. T. Dodd, of New York, the attorney who designed a plan whereby a single man has been able to amass a fortune estimated at no less than $800,000,000. The tobacco trust was conceived in the fertile brain of Elihu Root, and the sugar trust was made effective by John E. Parsons, both of them skilful lawyers. Seventy-five per cent of the corporations of this country are incorporated under one law, namely the New Jersey incorporation act, and James B. Dill, a lawyer of national eminence, was the father of that law. Morgan would have been an impotent factor in the banking world without the counsel of Charles E. Steele, a lawyer. As a captain of industry has said, "the lawyer has become a legal partner of trade," and as such is it not fair for the people of the country to call upon him in its hour of distress and claim the right to rely upon his initiative in opposing the evils that have sprung up from movements to which he is no stranger and in combating which his legal genius will be of value?

Right of Combination.

In discharging this obligation the legal profession cannot afford to disregard the

contentions of either side. The lawyer must concede to the industrial achievers the inherent soundness of the basis upon which they have proceeded. Our unparalleled industrial development rests upon the fact of effective combination and cooperation. The right of individuals to combine their resources and work together cannot be successfully disputed. Two or more men have the same right to combine and build a factory or railway as any other two or more men to agree to work side by side in the factory or ride side by side in the coach. The fact is that conveniency and expediency make working and riding together desirable, and this same cause has operated to make combination desirable. It is the idea at the foundation of government. We hold combination for the ends of government a political necessity. All unite under a government, instead of the individual arrogating to himself the right to govern himself, an act which would result in a state of confusion and anarchy. The necessity for combination in the industrial world is the same. We believe in industrial freedom, but the bar must agree that the idea of combination does not transgress the principle underlying freedom in industrial pursuits. The result in the matter of increased output of product is also in favor of this system of combination. There has never been in the history of the world as many people under one flag who, man for man, possessed so many of the material comforts of life as are now enjoyed by the people of the United States. Our per capita wealth has increased in one decade from eighteen to twenty-nine dollars. The wage scale is higher than in previous times. We are better clothed and better fed than ever before, and in addition to this our surplus product last year fed and clothed foreign peoples to the extent of $2,000,000,000.

Modern Business Methods.

But in conceding to business a just economic basis and one that has proved efficient in the matter of production, the legal profession should discriminate sharply between our industrial basis and the business methods which many of our industrial leaders have seen fit to employ in working upon this basis. The protest of the people of the United States is against modern business methods, but not against the idea of combination in the production of wealth. Their protest is against the illegal and immoral margin upon which men who have combined insist. It is this unjust margin that has spread unrest throughout the length and breadth of this land. The lawyer, then, owes a duty to his country in thwarting those industrial leaders, or capitalists, who seek to twist and distort the true meaning of combination. The extent of this duty and its paramount importance best appear through an analysis of business methods as they have actually worked out. Perhaps industrial enterprise in the United States centers around the construction and control of railways as much as any line of industry. At any rate the business methods of railroad financiers may reasonably be taken as typical of the methods pursued by industrial leaders in general. As set forth in a government report of 1888, they at least afford an introduction to, and an insight into, the scheme of finance fashionable among captains of industry in more recent times. In the report of this investigating committee of 1888 appointed by President Cleveland, the construction and history of the Union Pacific Railway was dealt with. We will now critically consider the business methods employed in the construction of this road. The Union Pacific with its connecting lines was built from Chicago, Illinois, to Sacramento, California, under a corporation holding a Federal charter. The corporation asked from the government, and secured under the law of 1864, a bonus of land amounting to 12,800 acres to each mile of railway, aggregating approximately 25,000,000 acres; and also a money bonus of $35,000 per mile, or some $65,000,000 in all, upon which it agreed to pay interest and repay the principal to the government at the end of thirty years. This government committee of 1888 found that the officers of the Union Pacific Railway Company had put into the road only $300,000; and at the end of five years, in 1869, when the road was completed, these same officers had realized on this meagre investment, be-

fore the road had turned a wheel, a clear profit of $42,000,000. These officers were enabled to do this by a nice ruse on the stockholders and the United States government. They accomplished this feat of finance by organizing a corporation known as the Credit Mobilier of America. John A. Dix, president of the Union Pacific, T. C. Durant, vice president, and Ames, Alley, Dillon, Bushnell, and McComb, other officers of the road, were the stockholders in the Credit Mobilier of America. These men, as officers of the Union Pacific, let the contract for the construction of the road to the Credit Mobilier. They very adroitly concealed the fact that the Credit Mobilier was a corporation constitued solely of themselves. This enabled them to deceive the public into the belief that the contract for the construction of the road was awarded to the lowest responsible bidder. They were not acting without a motive, for the expense of the construction was to be met by the thousands of innocent stockholders in the Union Pacific, who would naturally desire and expect that the cost of construction would be kept to the minimum consistent with good material. It was necessary, therefore, for the officers of the road to conceal their device from the stockholders, who, with the government, must meet all of the Union Pacific obligations. Proceeding then with the confidence of the public assured, these officers of the Union Pacific accepted a bid from the Credit Mobilier, which was in fact themselves, for the construction of the road at $50,000 per mile. It stands to reason that when these men contracted to pay themselves from a fund to which they had access but which was not their own, they, as employers, would prove very liberal to themselves as employees. In fact as employers they obligated the Union Pacific, not themselves, to pay $93,000,000 for the construction of the road but, acting as the Credit Mobilier of America, they obligated themselves to pay only $51,000,000. The handsome difference of $42,000,000 went to swell the coffers of the officers' own personal exchequers. A half century ago when a million dollars could not be made by a flourish of the hand on the stock exchange, a clear profit of $42,000,000 on an investment of half a million dollars for five years was not so far beneath the high financiering of these modern days. But the financiers of the Union Pacific had not played their last card. They prevailed upon the Federal government to make, in addition, an absolute gift of land which netted the road approximately $44,000,000, and to advance in principal and interest some $94,000,000. Under the law the Union Pacific was required to pay into a sinking fund each year a certain per cent of its profit from the operation of its road, sufficient to meet this obligation of $94,000,000 at the end of thirty years. But at the end of twenty-five years, in 1890, only $30,000,000 had found its way into this sinking fund, for the profits of operation went largely to pay dividends on more than $70,000,000 of watered stock held by the officers of the Union Pacific Railroad.

Here, then, in this industrial undertaking of the early sixties are revealed the seeds of corruption that found the soil of American life not unfertile. Here, thus early, comes the captain of industry with a brain that conceives, and an itching palm that finds the people's pocketbook; he unfolds his plan of rendering to society a great good, and at the same time, all unnoticed, he fastens upon a confiding public his subtle devices for extracting their dollars; he complies with the forms of law, but secretly and effectively contrives to transform law into a mask for the arts of the dishonest; he believes in law because its benefits outweight its burdens, and risks its hardships believing that the adroit can evade them by relying on its technicalities; he believes in improvement and development, and the means for increasing production, but looks with the keenest disfavor upon progressive and honest methods of distribution; in short, this railroad magnate of 1860 thought he had a right to put in a dollar and dream and draw out a million dollars, and conceived it to be justice for his fellow man to put in a life of toil and receive a mere subsistence wage.

It is in the teeth of abuses like these in present day business affairs that the

lawyer hears the call of his country. It is against such business methods that the legal profession must throw its weight in a phalanx of Macedonian strength. No lawyer worthy the name will sanction Wall street methods. A street that insists upon the right, because of its stupendous money power, to do business on a basis not quite sanctioned by law, should kindle in the breast of every lawyer who holds the rights of his countrymen at heart, a contempt well deserved. The lawyer cherishes free opportunity and equal chance, and he should always be found on the side of those who oppose the business methods that have actively influenced the concentration of this nation's vast wealth in a few hands. When he sees these swollen fortunes in the dishonest employ of strangling the independent producer and obliterating competition, that prices for the very necessities of life may be raised, the lawyer should work shoulder to shoulder with the people who seek to prevent the further concentration of wealth. When the legal profession looks out over the broad expanse of this country, and finds in almost every direction he may look that one or more of the vast accumulators of wealth are indicted for breaking the law to satisfy a greed for money, its duty is not to uphold the hands of him not untainted with criminality; but it is with those who believe that the possession of money does not raise its possessor above the laws of the land, and who, believing this, have resorted to the courts to compel a like obedience to the law by the rich and the poor.

Radical Reforms.

However, while it is incumbent upon the lawyer to shield and uphold the law-abider and to oppose and cast down the lawbreaker, his duty does not lead him so far as to enter upon a campaign of radical reform. There is always an element of danger in the harangue of the professional reformer. It is only times of extreme national distress, like those which justified the French Revolution, that will justify the radical reformer. But that is not our condition. We are not a nation founded upon the sands, but rather a nation founded upon the rock, while around us have sprung up the winds of greed to annoy. The lawyer whose services sound in a deep disturbance of settled conditions can hardly be working for the best interests of the whole people. He will hardly be distinguishing between the right to combine for the legitimate object of facilitating production, and the claims of those who twist the meaning of this right into a philosophy of industry that justifies them in rechanneling the fields of wealth so that all the nation's rivers of gold will flow into their own coffers. The former—the right to combine—is sound, but the latter is unsound; for the idea of combination and co-operation lies at the root of our industrial power, while the practices that enable the few to profit at the expense of the many are only evils that great natural resources have invited, and which can be eradicated without chopping at the roots of industry or sounding the death knell of material progress.

Influencing Business Methods.

The lawyer has at least two sane and legitimate avenues of directly influencing the business methods for the better. The first is through the practice of his profession. He comes in contact with all manner of people, from the most profound scholars to the most stupid dolts, from the purest innocence to the vilest villainy; and he understands the language of the human heart from the whispered wail of hopeless woe to the loud exultant peals of triumph. As a counselor and adviser his influence extends into the furthermost corners of the nation's business. Men of good and bad report, with every conceivable matter upon their minds, seek out the lawyer before they act, and lay before him their confidences and plans; and they shape their course according to his judgment and advice. In view of this fact the jocular remark of a noted New York lawyer, that he had now "attained the distinction of acting as counsel in chief to the criminal rich," becomes of significance in a discussion involving the relationship of the legal profession to the people's conflict with the leaders of organized wealth. This statement of the New York lawyer means something to

the profession. It means that that lawyer, for a fee, will design means of evading the law and thwarting the will of the people. It means that a part of the profession has prostituted its legal genius in the cause of crime and for the criminal's money. It means that those criminals who sat in the mahogany finished offices of Wall street had at their command a part of the shrewdest legal genius of the New York bar, to aid and abet in a course of lawbreaking.

That statement of the New York lawyer would not mean so much, however, were it not that it is the unexpressed boast of the leading lawyers in all of the large cities of the country. New York and Chicago present a spectacle hardly becoming the profession. The best legal talent of the two cities is in the employ of the criminal rich. It is this sort of a clientele that can afford to pay the largest fees, and they go into the legal market and buy the genius of the profession the same as they would go on the stock exchange and buy corn,—by making the highest bid. Does it lie in the mouths of these lawyers to say that they are engaged in the defense and maintenance of property rights which lie at the foundation of individual freedom? It does not. Can the lawyer who shows the railroad king how to bring two parallel and competing roads under one management, when the laws of his country expressly prohibit such combination, interpose this plea? Does this defense purge the stain from counsel who devises a plan of rebate against law, and upon which railroad men act, and are exposed, and confined in the penitentiary for having broken the laws of the land? There can be but one answer. These great corporation lawyers, so-called, want the $100,000 fee. They prefer the gold and power and unholy work to the more modest compensation and the field where legitimate counsel is adequate.

In view of this condition, it seems reasonable that the lawyer will strike the hardest blow at dishonest and dangerous business methods by withholding from mammon the privilege of shaping his advice to its ends, and by yielding to the leadership of conscience. The lawyer must hold to the noble ideals of morality, and spurn the passions that thirst for the corrupt man's gold; he must put integrity before conspicuous position; he must act upon the ideals of the law-abiding, and disdain to stoop to the wishes of the law-evading; he must seek power through avenues of honorable effort, and refuse to walk the rich tempter's "primrose path to hell;" he must coin the golden dollars of his fortune from the mint of character, and turn a deaf ear to the tinkling jingle of Wall street's tainted hoards; he must keep bright before him the traditions of his profession, and never let desire for place or fame dim their luster.

Supporting Legislation.

The second field of legitimate endeavor for the lawyer lies in the duty of supporting and effecting legislation adequate to the demands of the times. Such legislation is not secured by the lawyer who is in politics for its graft. It is not furthered by those lawyers who use public office as a private clearing house for the "rings" that represent special interests. It is not helped along much by those who are indebted to a lawbreaking industrial leader for his charter of political life, or by those who rely on the asset of capitalized faithlessness to the principles upon which they asked the suffrage of the people. No adequate legislation is gained from those who temper their action to the temperature of the stock market, or delay action until the ticker has announced another million in the bucket of a Wall street broker. It is not accomplished by those who connect too often with the private wires of great corporations, or by those fearful of their political future .

Again legislation adequate to the times is not effected by the demagogue. There could be a no more lamentable spectacle than a lawyer appealing to the prejudice and passion of a community for political preferment. To stand openly for a principle adverse to popular right is bad, but to prey upon the evil in men's hearts, and stir up hatred and revenge for selfish motives, is worse. When a lawyer goes out among his fellow citizens with his tongue laden with a doctrine of reckless denunciation that can serve no pur-

pose except to incite to riot, he is at least beneath all classes who think soberly and well, and he is a dishonor to the dignity of his profession. A lawyer whose only foundation for public life is the ability to prey successfully upon the depravities of men, and to make grandstand displays for popular favor, will be in the legislative hall the same that he is as a citizen,—a deceiver, and a confounder of the well-meaning.

When the legal profession has eliminated greed and hypocrisy from its activity, bearing on the transactions of legislative halls, it will be in a fair way toward an honorable discharge of a public duty. If the lawyer gives less than honest and conscientious effort, his services have failed of statesmanship and are unworthy of the approval of the people. The duty of the lawyer in the matter of legislation should be as carefully, earnestly, and honestly met as is his devotion to a client. The honorable lawyer never sells out his client's rights to the opponent, and the legislator of the same fidelity to the cause of right will not barter away the welfare of his country for a mess of pottage, or betray the interests of the community for a few pieces of silver.

The demand of the country from the legal profession at the present time is a wholesome surrender of its best genius to the cause of legislating the abuses of wealth out of existence. The bar should leave no stone unturned that is within its power for saving this Republic from the fate which has overtaken every other Republic where the national life became corrupt through the subtle and insidious influence of concentrated wealth. Through the means of the legislature it is possible for the legal profession to engage actively against all those forms of vice and ulterior motives that characterize a material age like ours. The bar cannot hope to baffle and defeat the intricate and refined systems of organized thievery which are undeniably thriving under the pseudonym of industry, except by bringing to bear the will of an honest people as expressed in the power of law. Legislators have only honestly to crystallize into law that rational public opinion which, if not tampered with, condemns the man who steals a million dollars the same as it does the man who, to satisfy his greed, commits petty larceny—legislators have only to put this sort of public opinion into the concrete form of a statute, and wholesale robbery will not be the burden of the remaining pages of our industrial history.

The conservatism of the bar, however, precludes participation in legislation that is too drastic. The preservation of the individual and collective rights of the people does not demand it. Legislation must be such that honest men will risk their capital in sane adventures; for the progress of honest industry and material development is essential to the perpetuity of the Union. The bar should be found supporting that legislation which makes clear the fact that both the people and the moneyed class have rights and both have obligations; and the rights of neither should be violated, nor should the obligations of either be dispensed with. Any law which is so radical that it is a weapon of revenge in the hands of an irate people, or so flimsy that wealthy evil-doers can evade it, is not worthy of the profession's advocacy, and should not receive the support of any lawyer.

Can the bar hesitate for a moment to go this far? When the lawyers look around them and see the very courts of this land mistrusted, will they longer, through action or inaction, give their sanction to a few powerful interests which thrive by unfairly crushing others? The lamentable position of a court called upon to interpret a defective or inadequate law is something to stir the lawyer to action. Less than two years ago a Federal court in Chicago was compelled to free a half dozen rich men who had amassed their fortunes largely through illegal and unjust practices, for no other reason than the inadequacy of the law under which they were indicted. The nature of the judiciary not being familiar to laymen, what wonder is it that adverse criticism of that Federal judge should have reached all the way from the cabin to the White House. With the corrupt and powerful members of society relying almost entirely upon the courts for vindication is it not reasonable that

the lawyers should put such statutes in the hands of our judges that their decisions, although in accordance with law, should not have the appearance of being a travesty upon justice? If popular faith in the judiciary is once shaken, what foundations have the other institutions of the Republic?

Will the legal profession withhold its support of adequate legislation in the face of the growing spirit of socialism? It is unrest born of unjust laws and the clumsy operation of just laws that converts orderly government into the chaos of socialism. A people who enjoy a system of law that falls for all practical purposes equally upon all, seldom crave the Utopian organization of government which socialism proclaims. When, under the law, such a contrast of life is not possible as that starvation should be gnawing at one man's vitals and his neighbor's stomach be gluttoned with the luxuries that $800,000,000 commands, then a spirit of unrest will not be so prevalent in the land that the vote of socialism will increase more than 50 per cent in a decade, and the spirit of socialism find its way into the platforms of the two great political parties, as they have in the past. If under the laws of the country it were practically impossible for a few men to secure wealth enough that its power should be felt in almost every legislative enactment, and so great that it has made the Senate of the United States a rich man's club, *de facto,* the great apostle of the Democratic party and the great leader of the Republican party would not unite in saying that under certain conditions the coal industry and other industries of a quasi public nature should be under government control and operation. Unless the enervating and destroying influence of corrupt wealth have eaten into the core of the legal profession and reduced its moral fibre to a disgusting putrefaction, it cannot stand idly by with the great machinery of the legislature at hand and see this country drift toward the morass of socialism, where all is experiment.

Creating Respect for Law.

There is another exalted sphere of duty, and the field lies white for the activity of the bar. By creating, so far as in its power lies, a general respect for law itself among all classes of Americans, a tonic will have been administered by the profession that will not be without its value to the present age and to posterity. The legal profession which exists for itselt alone is selfish and ill-adapted to the spirit of civilization which builds chiefly that others may enjoy. In fact the bar will fail in much if it does not succeed in elevating cynical America to an appreciation of the high ideals of law, for law itself. The lawyer must cultivate a reverence for law in the abstract. We hold law itself in contempt. We are all guilty. Perhaps we think at this day that the independence which our pilgrim fathers proclaimed was independence from all that constrains, whereas it was only freedom from tyranny.

However that may be, there is great need for the bar to use its utmost endeavor to increase regard for law as law. The lawyer's duty is to dissipate the idea that law is imposed and is not the creation of our own act. Our penal laws have not restrained. We murder more people in a year than does any other equal number of people on the globe. Our thefts are in the same proportion. For a civilized people our passions run mad. We are disgraced with prevalent lynch law, which is no law. The streets of our cities are often the scene of disorder and riot and bloodshed. One half of our statutes are dead letters. In the city of Chicago, in open court, citizens are asserting the legal right to violate a statute of the sovereign state of Illinois, and twelve men are upholding them in their paradoxical assertion.

In the face of this condition of affairs, the moral duty of the lawyer who would uplift, is clear. As a lawyer, to his community he must be an example of one who respects the law for law itself, and not for fees, much as they are to be desired. To make his fellow citizens feel that, when public opinion has been so far accepted as to be crystallized into a statute, that that statute is the expression of their own aspirations, is the calling and duty of the lawyer. He should impress upon the client whose claim is a fraud on justice that the integrity of the law

will defeat him, and refuse to employ his genius in dragging the law down to the level of a warped conscience. When the lawyer carries this reverence for law into every consultation and into the homes that he enters, into the caucus, and into the convention, and wherever he mingles with men, he will be instilling in the hearts of the people an admiration for the majesty of law.

Dignity of Law.

When, also, the bar defines law in its conduct as it is defined in the words of Burke, "a science which, with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of eternal justice with the infinite variety of human concerns," then it will have given to law the ethical basis that will commend it to the reasons and consciences of men. When men feel the authority of law as the authority of eternal principles of human justice which have their foundation in the hearts of men, a salutary reverence for law will be created. It is the high privilege of the lawyer to point his fellow men back of the decisions to the fountain from which flows all law. He must point them past these written expressions of truths and principles to their sources, for they are drawn from life itself and were in existence before the genius of the jurist had yet perceived them. The decisions contain nothing new, for the jurist's search only results in a discovery of principles as old as life itself. Who doubts that this was Lincoln's work? Did Lincoln create the law that proclaimed 4,000,000 slaves free men? Rather did he not give expression to a law as old as the human heart?

When the legal profession traces law back to its haunts in the consciences of men, it will lead men to appreciate the nobility and justice of law. The bar should arise to this high aim and exalted sphere of professional duty. To assume a lower standard of aspiration is to prove unworthy of the privilege of leadership which it has enjoyed from time immemorial. It is inconceivable that the legal profession of to-day will not accept this challenge for the sane and permanent solution of these twentieth century problems of the Republic.

With a heritage of noble deeds to inspire them, the lawyers of to-day will do their part without fear or favor. With diligence in the defense of the weak, and aggressiveness in opposing the oppressor; with a high regard for the poor man's rights and a sane but stern rebuke for the rich who seek special favors; with the motive always of leading his fellow men up honorable paths and toward a creditable destiny, the modern lawyer will prove faithful to his duty as a useful member of society, and he will merit his citizenship in a Republic of freemen.

"A Lawyer should be a Scholar, but, Sirs, when you are called upon to be wise, the main Intention is that you may be wise to do Good. A Lawyer that is a Knave deserves Death more than a Band of Robbers; for he profanes the Sanctity of the Distressed and Betrays the Liberties of the People. To ward off such a Censure, a Lawyer must shun all those Indirect Ways of making Haste to be Rich, in which a man cannot be innocent.—Rev. Cotton Mather.

The Lawyer as a Patriot

BY HON. JOHN C. SHERWIN

Chief Justice of the Supreme Court of Iowa

THE subject that I have chosen for this necessarily brief paper is as broad as the history of the world. Indeed, were full justice to be done it, volumes would be required to present to the profession in the most condensed form the splendid achievements of its members as statesmen and as patriots. From the very beginning of organized society, the lawyer has taken a large and a leading part in shaping the policy and the destiny of state and nation. It is not my purpose, however, to do more than to call your attention to a very few of the great number of lawyers whose names and public services are a bright and lasting part of the history of our own country. . . .

The three great events in our history as a nation are the Declaration of Independence, the adoption of the Constitution, and the Civil War; and in each of these events, and in the debates and agitation preceding them, lawyers took conspicuous parts, and were, at least, among the foremost in securing to the people of this great Republic the blessings which they to-day enjoy. . . .

Framers of the Constitution.

Historians say, and I think the statement is generally accepted as true, that out of the fifty-five members of the Convention, nine men were the most conspicuous in the adoption of the Constitution, and of these nine men seven were lawyers. They were Hamilton, Madison, Morris, King, Pinckney, Wilson, who afterwards became a justice of the Supreme Court, and Edmund Randolph. All were able lawyers and statesmen, who had been prominent in the events leading up to the adoption of the Constitution. All were true patriots, working with the unselfish and single purpose of securing for the people of this new nation a constitution that would endure forever. And what a wonderful instrument was produced! Except for the three amendments adopted at the close of the Civil War, it has remained unchanged for more than a hundred years, the wonder and admiration of the whole civilized world. It is an instrument whose flexibility has established its permanence, for in such flexibility lies the strongest guaranty of the permanence of the government. A constitution incapable of yielding to the growing and changing views and purposes of a great nation must sooner or later, be carried down by its own weight, while an instrument which yields to the urgent necessities of the times contains within itself elements which will sustain it for all time. The framers of the Constitution erected a monument to their ability and patriotism which will be as lasting as time itself.

All of the lawyers who had a part in this great work do receive the homage of their profession, and much might be said in praise of each; but my purpose at this time is to deal with but one of these illustrious men.

Alexander Hamilton.

No intelligent student of the constitutional history of the United States will fail to recognize Alexander Hamilton as one of the great minds of the world. For years preceding the adoption of the Constitution, he had been advocating principles tending to consolidate the Union, and formulating plans to attain that end. He was a close student of government, and had familiarized himself with the various systems that had theretofore existed. He was by nature, temperament, and equipment better qualified for the position he

occupied in relation to the Constitution than any other man. Curtis says that "his great characteristic was his profound insight into the principles of government; the sagacity with which he comprehended all systems, and the thorough knowledge he possessed of the working of all the freer institutions of ancient and modern times, united with a singular capacity to make the experience of the past bear on the actual state of society, rendered him one of the most useful statesmen that America has known. Whatever in the science of government had already been ascertained, whatever in the civil condition of mankind in any age had been made practicable or proved abortive, whatever experience had demonstrated, whatever the passions, the interests, or the wants of men had made inevitable, he seemed to know intuitively."

Hamilton was a mature man in intellect before he was thirty years old; and from the age of twenty-three until his untimely death at the early age of forty-seven he gave his best intellectual efforts to his adopted country. He believed in the efficacy of publicity for the advancement of correct principles, and in written appeals to the intelligence and honesty of his countrymen.

He was the chief author of the Federalist, and his papers therein, together with those of Madison and Jay, will be read with admiration and wonder as long as there are readers of books.

Hamilton was born a statesman, and in brilliancy of intellect and power to analyse, understand, and formulate correct principles of government, he has never had a superior. It is said by an eminent writer that he "wrought out for himself a political system far in advance of the conceptions of his contemporaries, and one which, in the hands of those who most opposed him in life, became, when he was laid in a premature grave, the basis on which this government was consolidated, on which, to the present day, it has been administered, and on which alone it can safely rest in that future which seems so to stretch out its unending glories before us."

John Marshall.

I must not omit mention of one of America's most illustrious sons. The reputation of the great chief justice, John Marshall, does not rest alone on his distinguished service as a jurist. He was a celebrated and brilliant statesman before he began the service that placed him among the illustrious jurists of the English race, second to none of them. He was a Federalist member of the Constitutional Convention, and took an active and conspicuous part in its deliberations and debates. He had already served several terms in the state legislature and was well equipped for the work of the Convention, where his national career began. He was afterwards an envoy to France, a member of Congress from Virginia, and Secretary of State, and in all of these positions of great responsibility he gave evidence of the ability that later characterized his service as a jurist.

Daniel Webster.

Soon after Marshall became chief justice, there was admitted to the bar of Massachusetts a young man who, by sheer force of ability and character, was destined to become one of the great exponents and defenders of the Constitution, and a combined lawyer, statesman, and orator whose equal the world has rarely if ever seen. Webster possessed a rare combination of remarkable qualities. It has been said that "other men have equaled him in argumentative power; other men have displayed as pure and lofty sentiment; other men have surpassed him in the domain of oratory; but, in the combination of great powers, he has had no equal among prominent men of America."

Webster attained high professional standing in a short time after his admission. He first located in Portsmouth, New Hampshire, where he was compelled to cope with able and experienced men. Jeremiah Mason, then in the full maturity of his powers and the acknowledged leader of the New Hampshire bar, was his chief competitor. During the nine years that Webster lived in Portsmouth, they were on opposite sides of most all of the important cases, and it was there that Webster laid the foundation for his future greatness. In his autobiography, Mr. Webster paid this tribute to Mr. Ma-

son: "If there be in the country as strong an intellect, if there be a mind of more native resources, if there be a vision that sees quicker or sees deeper into whatever is intricate, or whatever is profound, I must confess I have not known it." It must have been said that Mr. Mason educated Webster as a lawyer by opposing him, and that he cured him of all the "florid foolery of his early rhetorical style." But however this may be, certain it is that Webster became a great lawyer and a master of English style.

I shall not dwell upon his achievements at the bar, however. My intention is briefly to mention his great service to the country as an expounder of the Constitution. I shall not follow his course as a member of the lower House of Congress, but it must not be overlooked that, while serving there, his great ability and staunch patriotism influenced the legislation of both Houses. But as I view it, Webster's greatest services in this respect were rendered in his speech on Foot's Resolution in reply to Hayne, and his speech in reply to Calhoun's speech on the "Bill Further to Provide for the Collection of Duties on Imports." Both of these speeches were masterpieces of sound logic and of unrivaled eloquence, and the former, at least, exercised an influence that is potent to-day. Hayne was himself a brilliant orator and a champion of Calhoun's doctrine that the Constitution was a compact or confederation between sovereign states, and not the basis of a national government with rights and powers of sovereignty. In his speech on Foot's Resolution, Hayne had gone beyond the limits of the resolution, and indulged in sectional and personal attacks in keeping with his views as to the powers and rights of the states. Webster replied to Hayne's speech without special preparation and extemporaneously, and that he answered Hayne has never been seriously questioned. The fathers of the Constitution spoke through the orator, and it was a great masterly plea for a complete union and the national government.

It inspired intense patriotism in young and old, and placed Webster and Marshall side by side as preservers of the Constitution. They were to the Constitution, in their time, what Hamilton was in the age that witnessed its formation and establishment. The conclusion of that great speech has been so often repeated by the youth and age of this country on oratorical and patriotic occasions that it is familiar to all, and it is not too much to say that it largely inspired the patriotism that made possible the United States.

Abraham Lincoln.

Fifty years ago an angular frontier lawyer from Illinois went to the White House, bearing on his stooping shoulders a greater burden than even Washington carried. Indeed, he bore a greater burden than has ever been carried by another single human being; but he bore that burden with a spirit of solemn consecration to the great duties before him, and with trust and confidence in God and in the final triumph of the right. How well he performed those duties is evidenced by the reverent love in which his memory is held, not only in every part of a reunited and indivisible Union, but throughout the civilized world.

Great as other men in public life have been, Abraham Lincoln is the greatest character in the history of the United States, and I think, in the history of the world. Certainly no man was ever more intensely patriotic than Abraham Lincoln, and no man ever gave more to his country. He gave the product of years of the best part of his life, and finally his life. What more can a man give to his country! What higher example could be given those who were later to come upon the scene of national life, or what nobler example for all the people of our beloved country!

Lincoln did not go to the White House unprepared to meet the great duties and responsibilities placed upon him by his fellow countrymen. For years before his election, he had given deep thought to the one great problem then confronting us as a nation, and while he did not know when or by what means the problem would finally be settled, he had an abiding faith that, with Divine assistance, the Union would be preserved and the Constitution of Hamilton, Marshall, and Webster upheld.

One of Lincoln's characteristics was his ability to meet great occasions. His debates with Stephen A. Douglas in 1858 demonstrated that he was a man of great intellectual power, but his speech at Cooper Institute in New York city early in 1860 convinced the nation that he was a great man. His argument there on the slavery question was a constitutional argument against the claims of the South, equally as sound as Webster's reply to Hayne. It was full of the high and earnest character of the man, and foreshadowed what might be expected of him in the future. Of this speech, Joseph H. Choate said: "He spoke upon the theme which he had mastered so thoroughly. He demonstrated by copious historical proofs and masterly logic that the fathers had created the Constitution in order to form a more perfect union, to establish justice, and to secure the blessings of liberty to themselves and their posterity, intending to empower the Federal government to exclude slavery from the territories." In the kindliest spirit, he protested against the avowed threat of the southern states to destroy the Union, if, in order to secure freedom in those vast regions, out of which future states were to be carved, a Republican President were elected. He closed with an appeal to his audience, spoken with all the fire of his aroused and kindling conscience, with a full outpouring of his love of justice and liberty, to maintain their political purpose on that lofty and unassailable issue of right and wrong which alone could justify it, and not to be intimidated from their high resolve and sacred duty by any threats of destruction to the government or of ruin to themselves. He concluded with this telling sentence, which drove the whole argument home to our hearts: "Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty, as we understand it." That night the great hall, and the next day the whole city, rang the delighted applause and congratulations, and he who had come as a stranger departed with the laurels of a great triumph.

Lincoln's first inaugural address made plain to the people his purpose, under God, to maintain an undivided country, and from that moment he enjoyed the love and confidence of the great mass of his countrymen and countrywomen. When the American flag was shot from the heights of Fort Sumter, Lincoln was called upon to decide whether the power of a state under the Constitution was greater than the power of the nation, and history records his answer.

During the dark and troubled times that followed, he displayed that clear and unerring judgment that only great men possess. It is too often the case that our esteem for men is measured by the difficulties they surmount, but that is not true regarding Lincoln. The greatness that is justly attributed to his intellect and judgment is but a small part of his claim to the reverence of his countrymen. While a great intellect commands admiration, it is only the heart that can inspire great and enduring love. Lincoln's heart was as tender and as responsive as the heart of an affectionate child. No unusual or influential appeal was required to call forth his love for his fellow men. It was as quickly responsive to the call of the most humble as to the call of the most powerful. It was always as ready to soften the sorrow of some poor mother, whose boy had given his life for his country, as to gladden the life of one in high station. Who could fail to love and reverence such a character?

The great heart of Abraham Lincoln was opened to the whole world in his brief address at the dedication of the Gettysburg National Cemetery. In an address covering less than two ordinary book pages, he gave to the world, not only a literary classic, but a volume of love and sorrow that will live forever. It is a tribute that only a great heart can utter, and one that made certain the immortality of its author.

—By permission of author from address before Iowa State Bar Association.

The Lawyer as a Factor in Social Progress

BY SHEARON BONNER

Of the Dallas, Tex., Bar

THE importance of the lawyer as a factor in our social structure lies in his close and vital relation to law and justice. There is no greater fact in the universe than law. There is nothing that sounds so high and that so appeals to the human mind as justice. What wonder that the legal profession has long enjoyed an envious berth in society! What wonder that to the average imagination there is something dignified, responsible, and worthy about the lawyer! What wonder that he has held high places of honor in government, in business, and in politics! Such, it cannot be denied, are the facts. He is present at nearly every commercial transaction of importance. At public functions he is always prominent on the program. In our lawmaking bodies he appears in considerable proportion, and has a prominent part in shaping the laws of our country. And on the bench, as jurist, he holds the destinies of corporations and individuals in his hand.

It would seem, then, that the lawyer comprised a very substantial stone in the structure of our life, both national and private. It would seem that as a factor in social progress he were indispensable. Whether he is or is not, it shall be my purpose to develop. I shall give you the facts as I see them, unpleasant though some of them may be. And perhaps it were not unfit for any confession to be made by one who is a member of the legal profession, who himself wears the badge of lawyer, and to whom must apply in some measure every criticism of his class.

It cannot be denied that many beneficent laws have been put into our statute books by lawyers, and have by lawyers been enforced in our courts; that the Constitution of our country was made by them, and that our commercial and governmental systems are devised and upheld by them in large numbers. But what of the many laws in our law books that are not good laws? What of the many good laws that are not enforced? What of our commercial and governmental structures, anyhow? Are they satisfactory? What of our courts? Are they meting justice? Are they giving relief, or are they merely places where sham battles are being fought out day after day? Many voices are heard both on the platform and in the press giving unfavorable answers to these questions.

The Laggard Science.

Indeed, it can with truth be said at least that the legal profession has not kept pace with the procession in other lines of the world's activity. Great advance has been made in science, in architecture, in transportation, in business, and in education. But in the machinery of law and justice there has been no such growth. Much improvement has been made in the system of detecting and capturing lawbreakers, but in punishing them after they have been caught, there is no greater certainty now than in the past. Our methods are obsolete, and therefore cumbersome. Delays are easily obtained for the criminal. Reversals are granted by our higher courts on technical irregularities that in no way prejudice the rights of the accused. And yet the judges who sit in the name of justice,

and the attorneys who argue in the same name, are honored and respected men in their communities. On the street, in our homes, in churches, and in drawing rooms, they meet on equal terms with the best element of society. Some of their associates know of their methods, but the public knows them only as men, and not as lawyers. This condition is largely due to the reason that for a long time people have been too respectable to deal with facts; that unpleasant task has been left to cranks, radicals, and philosophers. The race has been afraid to strip things of their sham covering. This tendency has caused the legal profession to be spoken of as being "as honorable as justice;" has, I repeat, lead the average mind to continue to imagine the lawyer a moral and intellectual giant.

Literary Criticism.

But for a long time there has been a class of prophets and seers who have seen through the shams of the profession; who have seen, perhaps, too far in the other direction. They have discovered practically nothing of dignity, nothing of worth, nothing to respect or honor in all the machinery of justice as administered by the judges and the advocates of their times. These clear-sighted, though somewhat over-zealous persons, were at first principally the wits, the novelists, the dramatists, and the historians. But the class has grown in numbers until to-day it includes, as I have suggested, persons in every phase of life. The preconceptions of these fictionists and philosophers have become the fixed convictions of a great many clear-headed, fair-minded people.

I say that the real facts in regard to the profession began to creep out first in the annals of literature. Is there anywhere, even to-day, any more scathing criticism of the legal profession than is found in the novels and drama of even two and three hundred years ago? Shakspere for a time was an apprentice in a lawyer's office, and he, the master mind, never speaks of the lawyer with respect. Says Hamlet in the graveyard scene: "There's another; why may not that be the skull of a lawyer? Where be his quiddits now, his quillets, his cases, his tenures, his tricks?" It is said that two wits once strolled together past a cemetery. On a near-by tombstone one of them chanced to see this inscription: "Here lies a lawyer and an honest man." Struck by the incongruity of the epitaph, he read it aloud to his companion. The companion, with a sly twinkle in his eye, replied: "How strange, here are two men buried in one grave." Dickens describes quite a number of trials at law, and every one of them, notably that of the "Tale of Two Cities," is a farce. Justice is blinded, and scoffed at and driven halting from the walls of the court room. Victor Hugo in "Les Miserables" gave to the world a most powerful diatribe against the administration of the laws. Turning to literature of more recent date, who that has read Jack London's "Iron Heel" does not remember with pity and indignation the case of Jackson, who had his arm torn off in the factory?

"How could his answer be damaging if he had the right on his side?" demanded Avis Everhardt.

"What's right got to do with it?" the beaten attorney demanded back. "You see all these books." He moved his hands over the array of volumes on the walls of his tiny office. "All my reading and studying of them has taught me that law is one thing and right is another thing. Ask any lawyer. You go to Sunday school to learn what is right, but you go to these books to learn law."

Arraignment of the Bar.

Theodore Roosevelt in 1905, addressing the students of Harvard University, said to them: "We all know, as things actually are, many of the most influential and most highly remunerated members of the bar in every center of wealth make it their special task to work out bold and ingenious schemes by which their wealthy clients can evade the laws." Woodrow Wilson in a recent address is quoted as follows: "The legal profession, as a profession, does not enjoy the confidence of the people. I am surprised, and I must say disappointed, that the legal profession of this country has not undergone the same change and liberalizing that has characterized its progress in

other countries. The community no longer regards you as legal guides. You have withdrawn from statesmanship and lowered the profession to a strictly business basis. The ambush of technicalities you have drawn around the corporations makes it necessary to enact drastic legislation to tear away the shell and get at the heart." When David Lloyd George advocated to the Parliament of England in 1909 the raising of a tax on unused lands, his fellows hooted at his idea. They called him a thief. Said Henry George, Jr., in Congress not long ago, speaking of the episode: "Listen, you members of this House who are lawyers—they actually called him an attorney!"

After this general arraignment, what can fairly be said of the lawyer as a factor in social progress? My reluctant attitude in the matter is that the criticisms of the lawyer are only too true. The legal profession, as a profession, is a necessary, honorable one. It is only that some who belong to it sometimes dishonor it. And there is no avoiding the fact that the individual lawyer has not in a sufficient number of instances done his duty by the profession. He has given cause for complaint, not only to intelligent writers and speakers, but to his clients whose interests he has neglected as well as he may have at times dishonorably safeguarded. The lawyer may have been morally honest in that he may not have broken the laws of the land and has kept out of jail; but has he been what is of more importance,—intellectually honest?

With book and paper slow to court he goes,
And never tells the jury all he knows.

Has he not increased his own business to the detriment of the public welfare? A highly respectable illustration may not be out of place: There has been adopted in some of the states in this country a system of land registration called "the Torrens system." In theory it lessens litigation and makes it unnecessary for the purchaser of real estate to employ an attorney to examine an abstract of title for him. Whether the Torrens system is a practical success I do not know. It has not been adopted in Texas. However, my point is this: Some time ago I asked a very eminent professor of law in one of our law schools if the Torrens system was not worth trying and whether he favored it. With a knowing smile, he replied: "Well, we are not ready to try it yet." Of course, not from his standpoint. The more business for lawyers, the more lawyers; the more lawyers needed, the larger the attendance at the law schools. This, of course, is a very mild illustration. It is only one step in the wrong direction. But lawyers have taken further steps. They have brought and defended lawsuits for fees when they knew they could not win. They have turned loose upon society men whom they have known to be guilty. They have been betrayers of trusts, perverters of justice, unfaithful guardians of the rights and welfare of their fellow citizens.

Many Honorable Lawyers.

Why, then, do you not ask, are not there more lawyers in the penitentiaries? Most fortunately, while the foregoing remarks are true of some lawyers, they are not true of all lawyers. Lawyers are not all criminals and reprobates. There is some food for reflection, perhaps, in the fact already stated, that the lawyers themselves have a great deal to do with the making of the laws and with the administration of them. And there is no doubt that the lawyers are more favored by the laws than any other class of persons. But aside from this, all lawyers are not disgraces to the profession. We have now I think, barring some exceptions, in this country a most faithful and untiring band of prosecuting attorneys. I might speak at length of lawyers who have been honest, patriotic citizens, faithful trustees of their client's business, unselfish, honorable men. I have been measuring the lawyer by absolute standards. I have not compared him to men in other callings and professions. This fact is worth remarking: In the famous St. Louis city council, prosecuted so ably and successfully by Joseph W. Folk, of Missouri, there were fourteen members, twelve of whom were indicted and convicted. The only

two who were not indicted were both lawyers and they were the only lawyers in the council.

Limitations of Legal Profession.

But however efficient and honorable the individual lawyer may be, as a factor in progress he is handicapped by a limitation in the nature of the profession itself. The progress of the race has been along educational and ethical lines, in co-operative methods, in world-peace and world-harmony. But the profession of law serves only a material end. With the great moral and intellectual relations of the race, the lawyer, as such, has nothing to do. These are left to the ambassador, the poet, the inventor, the musician, and the philosopher. Even the physician has an advantage of him in this respect. There is also a further limitation. The world could no doubt get along pretty well without the lawyer after all. This is not meant to contradict what I have already said. No doubt in the arbitration of property disagreements and in the guiding of commercial projects the lawyer is necessary. But the fact remains that a large proportion of the citizenship of our country never have to consult an attorney at all. This majority lives and dies, peaceful, useful, and respected citizens. On parade occasions the lawyer looms large. As politician, lawmaker, orator, and office holder he is important, of course. But these are not fields in which the lawyer alone can serve. There the lawyer ceases to be an attorney and becomes merely a citizen.

Laws which Make for Social Progress.

The laws that I would pronounce as those that make for social progress are not so much the laws written on the statute books, but the laws written in the heavens and in the mind of man. They are the laws that work without ceasing even when the machinery of our courts and our legislature are silent. And the race is awakening to the existence and the power of these laws. People are studying now more than ever before the results, rather than the quality, of human actions. They are learning that no behavior can be good or evil in itself, but only as it produces good or evil. They are learning that elements of human conduct work like elements of chemistry. You put two or more known elements together and the result can be foretold before it happens. The doctrine of the penalty for the offense is established and permanent. It works throughout external affairs, and invades as well the human brain and heart. The laws of health are other laws of this class. If I were allowed to rewrite the very often quoted Scriptural injunction, I should say: "Seek you first the health of the body, and all these other things shall be added unto you." Nor is this a mere juggling of words. The ancient Greeks, no doubt, reached in many respects the highest pinnacle of civilization, and they gave a great deal of attention to the strength and symmetry of the body. But for a long time men lost sight of the value of physical health. Then social progress moved on, and men and women are again realizing the importance of the problems of the human body in a more sane and spiritual way than even the Greeks ever dreamed of.

Social Progress Positive.

Social progress has ever been and will always be away from the negative toward the positive. All law is in fact positive. There is a mistaken belief even among the law writers that statute law is a prohibition. But law does not prohibit. "Thou shalt not kill" is obsolete. Even the great Blackstone said that municipal law prohibits that which is wrong and commands that which is right. But the laws on our statute books do not prohibit that which is wrong. It might be trivially said that, regardless of the law, the thing is done anyway. But I know of no modern law, either human or Divine, that prohibits anything. "If you do this, you shall suffer. If you do that, you shall profit:" These are the only laws. There is no more destructive, weakening, or futile attitude in the world than that of being against something. The one thing that I remember about the words of Mr. Ward, the social center expert, spoken when he was in Dallas, is that he said, "I am not anti-anything." Woodrow Wilson

(whom I have already quoted), a man of marked progressive type, said to the labor element in our country: "I am for you, but do not think that I am against capital. I am a friend to both of you."

Cause and Effect.

The knowledge of these laws is not new. The doctrine of cause and effect, of sowing and reaping, aside from any idea of a future reward and punishment, has been the theme of many of the world's greatest authors. Becky Sharp, of "Vanity Fair," came to the only end that her wild and improvident life could have brought her. Arthur Dimmesdale, one of the principal characters in Hawthorne's wonderful "Scarlet Letter," was driven to public confession by no mere whim of his own, but by the inevitable law of conscience. Othello, who murdered his loyal wife, Desdemona, acted not through evil instinct, but because the law of his nature left no other course open to him. The tragedies of Hamlet and of Lear move to irresistible conclusions with a swiftness and horror so true to the constitution of the universe that we are gripped by a fascination when we read them or see them played. In George Eliot's "Romola," Tito Melema, a free, genial, and harmless soul, by one small step awry, sets between himself and the noble Romola a rift which widens to an impassable gulf with the sureness of fate itself.

But what I would have you know is that there has been progress beyond the reach of even these wonderful minds. They saw these laws clearly, but another law they did not see. They had their limitation, the limitation of their age and place in the evolution of society. Even George Eliot said: "Who shall put his finger on the work of justice and say, 'It is here.' Justice is like the Kingdom of God—it is not without us as a fact, it is within us as a great yearning." Theirs was the attitude of Senator Ingalls when he wrote, "Opportunity knocks but once at each man's door." He, and they, had not discovered the law within the law. They worshiped the God without the man, and not the God within him. The human soul is greater than all circumstance, by the very law of its being. Becky Sharp could have reformed. Arthur Dimmesdale was a narrow minister of the Gospel. Othello, though, as Ruskin calls him, Shakspere's only hero, was a medieval, and not a modern, hero. Hamlet was a crazy pedant. Shakspere, however, caught an unconscious glimpse of this modern law at least once, when Portia, that most lovable woman, held out to Shylock the privilege of turning back. And there is heard to-day by all who will only listen, the voice of the world crying out to them who have gone wrong: "The quality of mercy is not strained. It droppeth as the gentle rain from heaven."

Obstacles to Progress.

Three great obstacles to progress that I might mention in passing are ignorance, selfishness, and sentiment. Ignorance is worse than poverty. Poverty damns only the body, but ignorance damns the soul. For selfishness there is neither excuse nor apology. The great barrier of sentiment is very hard to break down. The household gods, the pet theories, the personal faiths, the private creeds, the conventions of society, they cling like barnacles to an old ship. But what sentiment is greater than a universal law? What sentiment is tenderer than the rules of love and friendship? What sentiment is more cheering than the sure result of giving, the sure punishment of guilt and greed?

Thinkers are Ministers of Progress.

I believe, in the final analysis, that those who minister most to the progress of the race are not confined to the members of any one class or profession in society. They are the men and women *who think*. It is they who create new things. As Emerson says, "Every event of history was once a fact in some man's mind." The thinkers, whether they write, invent, speak, or do things, are the apostles of truth and progress. Whether a man be lawyer, physician, preacher, or what-not, he is valueless to the world unless he think and explore and discover. He is invaluable when he does think, explore, and discover. A truth that hurts is better than an untruth which dulls and hypnotizes.

The Lawyer in American History

BY HON. FREDERICK W. LEHMANN

Solicitor General of the United States

THIS is a land of law and of lawyers. And too many of both is the general, if not universal, comment. Still the laws increase and the lawyers multiply. The profession here has a larger muster roll than anywhere else in the world, and however much it may be disparaged in word, nowhere else has it been so much favored in deed.

Peter the Great, during his stay in England, went into Westminster Hall and inquired who were the men in black robes doing so much talking. Being answered that they were lawyers, he replied: "I have two in my Empire, and when I return home I will hang one of them." Singular moderation on his part, for under his rule there was no occasion for even one lawyer.

Jack Cade in his scheme of leveling and license was more consistent and more thorough. "The first thing we do, let's kill all the lawyers."

Alike in the autocratic and in the communistic scheme of society the lawyer has no place. As the institutions of a country become representative, as man in his individual capacity meets with regard, the lawyer becomes important. He is the apostle of individualism and flourishes only under liberty regulated by law. . . .

Lawyers as Legislators and Executives.

With one department of the government exclusively its own, so far as conduct and administration are concerned, we might expect a jealousy of the intrusion of the profession into the other departments. The contrary is the fact. Lawyers have always been prominent, and often dominant, in the legislature and in the executive offices. Call the roll of our great leaders in House or Senate, and almost without exception they have been lawyers or students of law. There are Randolph, Calhoun, Clay, Webster, Benton, Douglas, and Seward. Lawyers are conspicuous in the list of governors of all the states. They are in the cabinets of the Presidents, not simply as attorneys general, but as holding every portfolio. They are our ministers abroad. They have negotiated nearly all our treaties, and accomplished all our peaceful acquisitions of territory. In the Missouri Compromise, the repeal of that Compromise, questions of internal improvement, controversies over the institution of slavery, they occupied the commanding positions upon both sides. Hamilton established the financial system of the United States, and his report upon manufactures is the classic of the protectionist, as Robert J. Walker's is that of the free trader. Jefferson and Benton fixed the principles of our currency. In the more recent controversy over our coinage system, the distinctive representatives of the two contending schools were Cleveland and Bryan.

Presidential Lawyers.

There is something in our history of greater significance than all this. The one office to which the people of this country hold as peculiarly their own, election to which is the result of genuine public choice, is the office of President. Cabals and intrigues may do much in a small field; the baser arts of politics may determine the result in a county or district, or state, but upon the broad plain of the nation, the popular will asserts itself, and no man has been chosen to the position of chief executive who did not possess and deserve the respect and confidence of his fellow countrymen. We compare our Presidents, one with the other, and we may well discriminate, as

they have not been of equal moral or intellectual stature, but it is none the less true that no man has ever attained to the presidency, or was the choice of one of the great parties for the office, who was not a man of character and capacity. With one exception, every President of the United States has come to the office from the battlefield or from the court room—with one exception they have been lawyers or soldiers, or both, and of the twenty-five incumbents, nineteen have been lawyers.

Lawyers in Public Life.

Not every member of the profession who participated in politics was elected to high office, but that so many were chosen proves what Justice Miller said in Garland's Case, that lawyers "are, by the nature of their duties, the molders of public sentiment on questions of government."

It has not been given to many men to do more for humanity than was given to the lawyers of Massachusetts and Virginia in Revolutionary days, and to write the lives of Otis and Adams, Henry and Jefferson, is to write the history of America during this time.

Another interesting group is to be found in central Illinois, during the two decades preceding the Civil War. Judge Ewing, of Chicago, tells of ten men who were at his father's hotel in Bloomington during a session of the circuit court of McLean county. They were Sidney Breese, Samuel H. Treat, Stephen T. Logan, John T. Stuart, E. D. Baker, James A. McDougall, James Shields, David Davis, Stephen A. Douglas, and Abraham Lincoln. Here were in embryo five circuit judges, four supreme judges, one attorney general, one Federal district judge, one judge of the United States Supreme Court, two major generals, six members of Congress, six United States Senators, and one of them senator from three states, one vice president, one candidate for the office of President, and one President.

This prominence and influence of lawyers in our public affairs was remarked by all foreigners who visited America. Comments upon it are frequent in the books they wrote about us, and generally were favorable or unfavorable as the writer thought well or ill of our institutions. . . .

Revolutionary Lawyers.

James Otis resigned his office because he would not support the petition for a writ of assistance, and took up the cause of the merchants who opposed the writ. His action was very popular, and it was entirely professional. He was under no obligation to assert for the government, and to aid its exercise of a power against the people which he believed the government did not and should not possess. The case was in no proper sense a lawsuit. It was a political contest, in which no good citizen would permit himself to be retained against his convictions. John Adams defended the British soldiers who were indicted for murder because of what was known as the Boston Massacre. The cause was quite as unpopular, so far as concerned the defense of it, as was the application for writs of assistance; it excited the same popular passions and prejudices at the time, but it involved, so far as concerned the lawyer, a very different principle. The men indicted were entitled to a trial, and the trial involved simply the question whether they were, under the law and the facts, guilty of the specific charge against them. And while Adams suffered something at the time, the people came to a proper appreciation of his conduct, and the courage he had shown in opposing their transient resentment commended him to them as a leader who might be trusted in "the times that tried men's souls."

It must not be assumed that human nature was very different in that olden day from what it is now.

There were many indifferent to public affairs, and who, intent only upon their own selfish interests, confined themselves strictly to their calling. Others sided with the Crown, and were rewarded with lucrative business or places of honor and profit. Adams felt that he was rendering to the people great services and making great sacrifices for them, and was tempted often to give up the struggle, and, by sticking to the office and the farm, provide a competence for

himself and his family, which, although one of the first lawyers of the province, after many years of practice, he had failed to do. But he held, in spite of all temptation, to the high and honorable purpose with which he had begun his career, and there were enough of others to go with him to keep that generation of lawyers in the forward path, and to accomplish a measure of good that we may be thankful if we come near to in our day.

Altogether, as we review the history of the legal profession in America from the middle of the eighteenth century, we see in it a large and honorable part of the history of the country and its progress. . . .

The decline in the influence of the profession upon public thought and action, which has been noted by all and is commented upon by Mr. Bryce in his American Commonwealth, is due primarily to practices which have lowered the profession in public esteem.

Lobbyists.

With the growing complexity of the social structure, legislation has come to affect more and more the private and pecuniary interests of individuals, and as a consequence, selfish motives prompt more than ever to interfere with and influence political action. The lobby has become an established institution, and, unfortunately, lawyers, or men claiming to be lawyers and to be acting as such, make up the major part of its membership. There are some, a very few, matters coming before a legislature for determination which are purely private in their nature, and as to these there may be proper scope for the exercise of a lawyer's functions. But the great mass of matters with which a legislature has to deal, and respecting which lobbyists are employed, are of public import. They present, not questions of individual right dependent upon past transactions and determinable by existing law, but questions of what the law, as a general rule of conduct, shall be for the future. As to these every man has the right, and the same right—and it is not only a right but a duty—to use his best efforts to secure action in conformity with his convictions. His services in this regard are, however, not the subject of a professional retainer. As a citizen the lawyer has no peculiar prerogatives, and he may no more sell his influence than he may sell his vote. In the court room he must be the zealous servitor of his client, and there the utmost of professional zeal is consistent with personal honor. On the hustings, at the polls, and in or about legislative halls, his country is his client, and

"The hand of Douglas is his own"

The profession owes it to itself by every means in its power to make plain that a lobbyist is not a lawyer, and to make sure that a lawyer is not a lobbyist. . . .

Political Problems.

The political problems of the present, like those of the past, and even more than those of the past, call upon the lawyer for aid in their solution. During this generation of men, the methods of business have undergone radical change. Formerly the sign above the door of the business house was that of John Smith; now it is that of John Company. The corporation has taken the place of the individual; a fiction of the law has become vested with powers and attributes which the man of flesh and blood does not possess. The corporation may be a good servant; it is certainly a bad master. When men combine their capital, the aggregate material result is found in the sum of what has been contributed, but the resulting moral force cannot be greater than that of the highest individual conscience involved, and it may be lower than that of the lowest. The combination of capital for some purposes, and to some extent, is undoubtedly beneficial. But for what purposes, and to what extent? These are questions which we have to answer. And upon what terms and conditions shall the combination be permitted? God made man in His own image; in what image shall this creature of ours be made? When dealing with natural persons, we have no difficulty in agreeing upon fundamental principles. "We hold

these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." We cannot agree upon such a declaration concerning corporations. They are not created equal. The rights with which they are endowed are not inalienable. They have no real life or liberty, and they can enjoy no happiness. The fiction of personality as applied to corporations, convenient as it is for many purposes, is often misleading. A corporation is but a grant of powers and privileges to individuals; something superadded to natural rights. Laws do not grant to men the rights to life, liberty, and the pursuit of happiness. These exist independently of laws, and laws are enacted only to make them more secure. But independently of laws, corporations have no existence, and they have no right to existence, save as they serve the welfare of men. So when they are made, they should not all be in one image or after one likeness, but each class must be adapted to the purpose it is intended to serve, and must vindicate its right to be by its utility. Combinations in some forms and for some purposes are imperative. Without co-operation, a progressive civilization is impossible. But while the individual has rights which are absolute, beyond the rightful power of even a majority, however large, to impair, a corporation, as such, has none. It takes whatever it has from the will of the majority, as expressed in the law of its creation, and it is a crime to transgress that law.

To secure a recognition of individual rights was the work of our forefathers. To determine the appropriate bounds and modes of collective action, and to confine it within those bounds and hold it to those modes is the work set for us to do.

In the older work the lawyers of America performed a conspicuous and honorable part, and the field of opportunity for them to-day is as wide as it was then. They are, by the very practice of their calling, brought into close relation with every phase of the new problem. They can observe the working of the laws, and note the good and the ill that results. Themselves taught by experience, they can inform the public opinion as to changes that are needed; where boundaries may be extended, and where they should be more confined; what modes of action are helpful, and what are hurtful, to the general welfare; and, above all, they will know how best the corporation can be held in obedience to the law which gave it life.

Fidelity to Ideals.

Whether lawyers will continue to hold high office in the measure of the past matters not, but it matters everything for them and for the country that they remain true to their traditions as helpers and leaders in every public cause. That they may do this, they must have the confidence and esteem of their fellow men, as Hamilton and Jefferson, Webster and Calhoun, Lincoln and Douglas, had them. They must maintain the old standards and ideals; putting achievement above emolument; a good fight before a great fee, and keep unsold and unhired their manhood and their citizenship. In the public work of the future there is a place for every member of the profession; for the specialist and the corporation lawyer, as well as the rest; but always, as in the past, in the front rank will be the man of all-round attainments and all-round experience, the model of the American statesman—the country lawyer—for his day is not past, nor in a free country ever will be. He will live

> "For the cause that needs assistance,
> For the wrongs that lack resistance,
> For the future in the distance,
> For the good that he can do."

—From address before Nebraska State Bar Association. By courtesy of author.

The Lawyer and Our National Evolution

BY JAMES A. B. SCHERER, LL.D.

President of Throop Polytechnic Institute

IN leading up to my subject I ask you to note the three stages of our country's political growth,—factionalism, sectionalism, and nationalism. Faction afflicted the colonies until at length it crystallized into the fierce sectionalism of North and South. For a long time, however, it was piecemeal and indiscriminate. Strung as they were up and down along the Atlantic seaboard, the thirteen colonies sought each to be a law to itself and to get the better of its neighbors. "Besides their disputes with the royal governors, they had quarrels among themselves about boundaries, about relations with the Indians, about shares of responsibility for the cost of colonial wars,"[1] leading the canny and much-concerned Franklin on one occasion to accompany his printed description of the loss of a fort with the picture of a rattlesnake cut into thirteen pieces, illustrating the motto, "join or die."

Even when joined in their war against the mother country, they had bickerings and dissensions that distressed the calm and patient Washington almost to the point of despair. Once he wrote: "Different regiments were upon the point of cutting each other's throats for a few standing locusts near their encampment, to dress their victuals with. . . . Such a dearth of public spirit . . . I never saw before . . . and pray God I may never be witness to again. . . . Could I have foreseen what I have and am likely to experience, no consideration upon earth should have induced me to accept this command . . . but we must bear up . . . and make the best of mankind as they are, since we cannot have them as we wish." A recent writer has said: "It can scarce too much be insisted that our Revolution was not a sort of flawless architectural fabric, made wholly of colonial pillars and patriotism, but that it had a sordid, squalid back door," *—the back door of factionalism.

This squalid back door would seem to have opened straight into the hall of the constitutional convention at Philadelphia. Gladstone erroneously called our Constitution "the greatest work ever struck off at any time by the mind and purpose of man." Great it most certainly is; but its real greatness is enhanced as we reflect that it was not struck off at a single blow by the unimpeded genius of calm statesmanship—it was built up from the slow accretions of a widely diversified colonial experience, and finally beat and hammered into shape by the arms of rough battling giants, in the heat of fierce factional jealousies. The convention wrangled from the 25th of May until the 17th of September, 1787, delegates struggling one with another to advance specific local interests or to secure the triumph of pet theories, while the aged Franklin sat pensive with grave misgivings, and the almost superhuman dignity of Washington barely enabled him as chairman to bring the event to its issue. At one time he wrote, with pungent disgust: "I almost despair of seeing a favorable issue to the proceedings of our convention, and do therefore repent having had any agency in the business." The temper of the men and of the time is suggested tersely by the fact that, when Franklin arose one day and surprised the convention by proposing that, as a last resort,

[1] Goldwin Smith, Pol. His. U. S., p. 65.

* Owen Wister, Seven Ages of Wash'n, p. 175.

they invoke the assistance of Providence, his resolution met with angry and derisive disfavor. The consideration that the country was on the verge of civil war, which could be prevented only by some sort of compact of union,—this consideration alone finally brought the disrupted factions to agree upon the great document of compromise that had been inspired by the genius of Hamilton, manipulated by the ingenuity of Madison, and wrought into its fine ultimate form by the literary skill of Gouverneur Morris. While the instrument was being signed by the delegates, Franklin pointed to the small picture of a sun on the back of Washington's chair (you may still see it in the old state house in Philadelphia) and explained: "I have often and often, —in the vicissitudes of my hopes and fears, looked—without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising, and not a setting, sun." The Constitution then had to struggle for three years to secure the ratification of the states, terminated at length by the reluctant action of Rhode Island in 1790.

In Virginia the Constitution was opposed by such patriots as Patrick Henry, Richard Henry Lee, and James Monroe. Although defended by Madison, Randolph, and Marshall, it would probably never have been ratified at all without the personal influence of Washington. Even so, it prevailed by a bare majority of ten in a total of 186 votes. That which caused the contention was the same conflict that had made the most trouble at Philadelphia; namely, the clash between states' rights and centralism. Virginia divided on this question, but so also did Massachusetts, where Hancock and Adams led the opposition on the ground that states' rights were assailed. When Massachusetts finally ratified the Constitution, it was by virtue of Hancock's proposition that it should afterwards be essentially amended. Even so, the vote stood 187 to 168. South Carolina passed similar resolutions of amendment, but ratified the Constitution by a majority of seventy-six votes. New York did not ratify at all until nine states had made the union binding, and then by a bare majority of three. Washington credited Wilson with "saving the Constitution," —he carried Pennsylvania by stumping the state. Such facts prove conclusively that the struggle between states' rights and centralism existed in the beginning without the slightest regard to locality. Sectionalism had not yet emerged. . . .

Slavery.

Slavery itself was not a sectional issue at the first. At the close of the Revolutionary War the colonists found themselves in possession of 600,000 negro slaves, distributed throughout their whole territory. They had made continual attempts to get rid of them, but England would not permit it. Mr. Lecky is authority for the statement that in the latter half of the eighteenth century the importation of slaves into the colonies had become "a central object of English policy." He quotes "a distinguished modern historian" to the effect that in the century preceding the Declaration of Independence, the number of negroes imported by the English alone, into the Spanish, French, and English colonies can, on the lowest computation, have been little less than 3,000,000, and that we must add more than a quarter of a million, who perished on the voyage and whose bodies were thrown into the Atlantic. Jefferson, in his "Notes on the State of Virginia," boasts that "in the very first session held under the republican government, the assembly passed a law for the perpetual prohibition of the importation of slaves;" and adds: "This will in some measure stop the increase of this great political and moral evil, while the minds of our citizens may be ripening for a complete emancipation of human nature." He was but one of a great body of leading Southerners opposed to the principle of slavery, and seeking some practical means of emancipation. John Fiske says that "in Virginia all the foremost statesmen—Washington, Jefferson, Lee, Randolph, Henry, Madison, and Mason—were opposed to the continuance of slavery; and their opinions were shared by many of the largest planters." Virginia, indeed, was the first of all the states in the Union to prohibit the importation of slaves, and Georgia the first to emphasize the anti-

slavery attitude by incorporating such a prohibition in her Constitution. Every state in the South at one time or another passed laws to the same effect. This did not touch, however, the question of slavery as already existing, being designed merely to prohibit its increase. The Constitution reckoned with slavery as an actual and important condition, in its apportionment of congressional representatives, its treatment of fugitive slaves, and in virtually fixing the year 1808 as the time when the importation of slaves should everywhere be totally abolished. Negro slaves were more numerous in the South, owing to the climate and the proximity of the West Indies. But Virginia had nearly half of the entire number. In Georgia, when the Federal Constitution was adopted, there were only 29,264 slaves, while New York had 21,324. New Jersey and Kentucky owned 11,000 each.

But between 1790 and 1800 something happened,—something that had an enormous effect upon slavery. The slave population fell off in the North, but increased 33 per cent in the South within that decade. The next ten years show even a greater divergence. The number of Southern slaves increased from 857,000 in 1800 to 1,163,854 in 1810, while the northern slave population fell from 36,000 to 27,500. New York and Georgia, which had stood nearly equal in 1790, now show an enormous difference,—15,000 in New York and 105,000 in Georgia. Within the same twenty years the commercial value of African slaves had trebled. Moreover, South Carolina in 1803 repealed her law against the importation of slaves, and began again to ply the black traffic. In 1810 the South was the chief manufacturing section of the Union; the manufactured products of Virginia, the Carolinas, and Georgia alone exceeding in variety and valuation, those of New England. But the something which happened between 1790 and 1800 transformed the South from the chief manufacturing section of the Union into one vast unrelieved plantation, its industries tumbling to ruin, because the Southerner found that he could make at least 10 per cent on agricultural investments.

The Cotton Industry.

In 1792 Eli Whitney sailed from New York to Savannah to teach school. The widow of General Nathanael Greene was on board, with her children. He was clever and inventive, beguiling the tedious hours of the journey. When they reached Savannah, his employer gave him the slip. Mrs. Greene said, "Come with me to Mulberry Grove plantation, and tutor my children." One evening a party of army officers who had served under Greene called at the mansion on the widow. In the course of the conversation one of them remarked:

"What a pity upland cotton sticks so closely to the seed that it takes a man a whole day to separate a single pound! If it could be separated as easily as sea-island cotton, the South would quickly get rich."

With a woman's friendly enthusiasm, Mrs. Greene said that she was sure young Mr. Whitney could do anything,—he had mended her embroidery frame and made it even better than before. He was called from his books and the situation half humorously explained. Protesting that he had never seen any cotton, he nevertheless became interested, and set to work next day, to please his hostess. First, he fixed wire teeth to a board, and managed, by pulling the lint through, to leave the stubborn little wooly seeds behind. He then reasoned that by applying these teeth to a revolving cylinder, the lint could be drawn through very swiftly. By the addition of a revolving brush to clean the teeth free of the lint, the first Whitney gin was completed—in the spring of 1793. With the use of this primitive implement, 50 pounds of lint could be separated from the seed in a day by one man, and cotton at once became the most profitable crop in the world, the South having by virtue of its peculiar soil and climatic conditions a practical monopoly of production. A million and a half pounds were exported during the year following the invention of the Whitney gin, whereas in 1764 eight bags of cotton had been seized by the customs at Liverpool out of an American vessel, on the ground that cotton could not be produced in America,

and the Shipping Acts required that importations must be made in vessels belonging to the land of production. Two years after the gin was invented, 5,500,000 pounds of cotton were exported, and so on in a rapidly increasing progression, until, by the year 1825, cotton had grown from zero among exports to a valuation of $37,000,000 in a total of $67,000,000 for all domestic exports of this country, or more than half. Meanwhile, the world's consumption of raiment was rapidly shifting from woolen and linen to cotton. In 1783 it was 77 per cent woolen and 18 per cent linen; a hundred years later, only 20 per cent woolen and 6 per cent linen, while cotton had grown within the same period from 4 per cent to 73 per cent (in round numbers). So great has been the influence of this plant on American history that one is reminded of Ovid's fable of Arachne, and half tempted to fancy that the spider goddess, hid in the heart of the cotton ball, has woven the web of our destiny. The cotton plant generated sectional policies, dominated national politics, fostered Southern slavery while feeding the mills of New England, and thus, pitting Calhoun against Webster, spun at length the bloody tangled web of civil war. This war might have found some other occasion had cotton not existed in this country; its seeds lay embedded in the compromises of our great Constitution; but the peculiar conditions to which the cotton industry gave rise quickened the quarrel to such rapid maturity, and wrought it to proportions so huge, that the combat might properly be called a war of Arachne's own making.

Nationalism.

We all know the result of that war, and rejoice in it. The Union proved strong enough to save itself, the compromises of the Constitution were settled at the point of the sword, and sectionalism was conquered by main force. Previous to that great arbitrament we had a divided motto. The North had shouted "unum," while the South was lusty with its cry of "pluribus." Now they unitedly cherish the motto, "E pluribus unum."

The final, frank establishment of our nationalism did not wait upon the Spanish war, as has sometimes been alleged. It came with the presidency of Cleveland, a man who, it seems to me, bears more than any other of our Presidents the Teutonic stamp,—a sturdy Martin Luther of a man, who battered down the stubborn facts of difficulty that confronted him like stone walls by the sheer force of a sledge-hammer character. The keynote of that sonorous character was fearless honesty, and that is the best sort of magnetism with which to win the devotion of honest men. . . .

It is really a moral issue we are facing. When Daniel Webster was only twenty years old, a school teacher in Maine, he delivered an address that needs to be remembered at this hour: "To preserve the government we must also preserve a correct and energetic tone of morals. After all that can be said, the truth is that liberty consists more in the habits of the people than in anything else. When the public mind becomes vitiated and depraved, every attempt to preserve it is vain. Laws are then a nullity, and Constitutions waste paper. There are always men wicked enough to go any length in the pursuit of power if they can find others wicked enough to support them. They regard not paper and parchment. Can you stop the progress of a usurper by opposing to him the laws of his country? Then you may check the careering winds or stay the lightning with a song. No. Ambitious men must be refrained by the public morality,—when they rise up to do evil, they must find themselves standing alone."

I speak in no sense as a partisan when I say that the new stage of national evolution into which we have entered demands higher standards in politics. It is a pity that this noble word has fallen into such sad disrepute. It means the science and art of social service, the unselfish enlistment of an individual for the common welfare, the common weal, which is to say, the commonwealth. Dr. Henry S. Pritchett, one of the wisest men in this country, attributes the present odium attaching to the name "politician" to several causes. "One of these is the injustice of popular opinion as influenced by a partisan press which be-

littles the motives of all men in public life. There are to-day and always have been politicians in American life who are men of high principle and of high thinking. From my experience with the Congress of the United States," he goes on, "I would place the membership of that body upon the same moral and intellectual plane as that of the average college faculty."

The Lawyer's Influence.

President Pritchett then points out the fact that lawyers have predominantly influenced our political affairs. Engaged by his statement, I have looked up the status of our present Congress with interesting results. Three hundred and eight members, or 69 per cent of the total number, were lawyers before they entered upon this public office. Next come farmers; only twenty-three members, or 5 per cent of the whole. Then journalists; sixteen members, or 4 per cent. Next come manufacturers; fifteen, being 3 per cent of the body. Finally comes the profession to which I belong; there are but ten teachers, as against three hundred eight lawyers. Represented graphically, the lawyer in politics looms to the height of 7 feet, the farmer creeps up to half an inch, the journalists and manufacturers to something less than that, and the teacher to an almost imperceptible minimum. It is well for lawyer and teacher alike to remember at this time the noble ambition of George Washington to establish a national university for the purpose of aiding the youths of this country "in acquiring knowledge in the principles of politics and good government." Politics should be raised to the dignity of a profession, as in England and on the continent of Europe. For my part, I am ashamed that so few of my own calling take an active and helpful part in public life. For your part, it seems to me that the enormous influence which you wield in political affairs carries with it a heavy responsibility. For lawyer and teacher alike there is clear and challenging call to a higher patriotism,—one that shall be not factional or sectional in its scope, but broadly national. I would that we might say in a spirit of consecration, with Lowell:

"O beautiful! my country! ours once more!
Smoothing thy gold of war-dishevelled hair
O'er such sweet brows as never other wore,
And letting thy set lips,
Freed from wrath's pale eclipse,
The rosy edges of their smile lay bare,
What words divine of lover or of poet
Could tell our love and make thee know it,
Among the nations bright beyond compare?
What were our lives without thee?
What all our lives to save thee?
We reck not what we gave thee;
We will not dare to doubt thee,
But ask whatever else, and we will dare!"

A new era dawns before us. Old issues are dead and buried out of sight, and none are strong enough, even if any were mad enough, to revive them. We will build monuments, if you please, above them, to hold the record of what part they once played in the drama of our national life. Ever and anon memory may revisit the scene, scattering flowers over lonely mounds or twining garlands around the monumental shaft; yet it is the present with its duties which we must confront. There is work enough for brain and heart.—James B. Clark.

The Profanation of Sacred Testimony

BY WEBSTER A. MELCHER, LL.B.

Member of the Pennsylvania Bar, and Examiner of Questioned Writings and Documents

IT is a far cry from evidence quasi holy to evidence accepted as verity without investigation; yet, in the administration of justice, the lawyer often finds both varieties regarded as sacred. A mere copy of Holy Writ is treated as if there were an intangible sacred something about it, imparting to it a species of sanctity, comporting only with absolute truth and justice, and compelling to such truth and justice all who come in contact with it in legal proceedings. The sacredness of the original Scriptures is imputed to the copy, and is expected to have a moral effect on the individual, whether he be of a religious nature or not.

Then there are certain secular writings that are similarly regarded as sacred, but silent exponents of truth and justice, and accepted as trustworthy, without question or proof; such are many private records, like deeds, plans, registers of family history, diaries, etc. To acquire the sacred halo, these need only to have escaped destruction long enough after their purported birth dates, to make it difficult to find a living witness with a contemporary knowledge regarding their subject-matter.

In both cases the desired results are often not obtained; for witnesses frequently lie, though sworn on the Holy Scriptures; and secular records (though ancient) are frequently found to be more or less false. But it is neither of these shortcomings with which we are now concerned, but rather the active prostitution of these two kinds of sacred testimony by the intentional use of them in order to assist in the accomplishment of actual fraud.

When some bold scheme to defraud is being evolved, the perpetrator will not hesitate to take advantage of the reverential regard of the public for certain surroundings and circumstances. Especially is this true, if the advantage can be so easily gained, as by the mere injection of a Bible or ancient record into the scheme; he will even be willing to manufacture the "old" record for the occasion, if he thinks he can secure its acceptance with little or no proof.

In one view, the mere attempt at such special profanation of sacred evidence is an involuntary tribute to the real sacredness of such evidence in general. On the other hand, it is indeed remarkable to what extent the profanation is at times carried.

Sometimes, the scheme is an attempt to collect money on a forged obligation; and, by reason of death, or other circumstances, the custody from which the obligation is to be produced gives the schemer a troubled mind. He has been known to solve the difficulty by having the paper found by an innocent party, in an appropriate Bible;—or possibly in a diary, or in some other book containing other valued private records having no bearing whatever on the obligation itself. The same plan has been used in attempts to capture estates through bogus wills. The idea, apparently, is that the finding of the fraudulent paper in such good company will (and it often does) forestall and prevent the entertainment of dark suspicion, and the asking of embarrassing questions.

Or the schemer may desire the "sacred" assistance, in the way of cor-

roborating evidence for some claim he is making. Such instances have occurred, where old plans of surveys have been falsified, by the addition of a line here or there, which it was thought could not be detected; or where forged title papers, falsely purporting to be old, have been placed on record, and then the originals have been "lost," or where questions of pedigree or descent are sought to be definitely settled, by either false entries in a genuine family Bible, or an entirely "manufactured" family record.

But by far the most remarkable instance in the author's own extended experience was practically a combination of all these methods with the addition of a number of others.

"Once upon a time" an aged peddler, of foreign birth, and apparently without home, friends, or means, died in a public hospital in the City of X. Upon searching his small bundle of effects, it was discovered that the decedent had a very considerable sum of money on deposit in that city, and that his name was (we will say) Louis Schinski. No will was found, however, so letters of administration upon his estate were taken out in that jurisdiction, and a search was begun for his kindred; failing to find any relatives, an advertisement for information as to their whereabouts was published in the daily papers, but even this did not bring forward any kith or kin.

Several months later, a party named (we will say) John Jones, residing in a distant part of the country, came on the scene, and claimed the estate by virtue of a will—or rather, several of them—dated some fifty years before, and purporting to have been written and signed by the decedent, but without subscribing witnesses.

Nothing relating to this claimant, or the claimant's family, was to be found among the decedent's effects, and the claimant did not pretend to have had any personal knowledge of the bequest until after the death of Schinski.

As to the custody and production of the papers, the story was pretty much as follows:

Shortly after the advertisement for heirs of Louis Schinski, a business man living in the claimant's neighborhood received by mail, from a distant town, a package containing an anonymous letter to the addressee, and inclosing several letters to one of Jones's deceased parents, dated at various times and places nearly half a century earlier; these old letters purported to have been written by decedent, and every one of them contained statements laying the foundation for a will in claimant's favor. There were also inclosed in the anonymous letter several "wills" coinciding in tenor and dates with the said old letters, and also purporting to have been written and signed by decedent; every will had its corresponding letter, as it were, of advice as to same.

The anonymous letter above referred to was dated several months prior to its mailing date; its writer stated that an ex-convict acquaintance of his had stolen the old letters and wills from Jones's parents many years before, thinking they were of value; that on finding them worthless to him, the thief had delivered them to the writer, with a request that he endeavor to locate and return them to the claimant; that the writer had just ascertained the whereabouts of Jones; and ended by asking the recipient to turn them over to the said Jones.

Apparently the recipient was in no hurry communicating with the stranger beneficiary; for after some delay, there came another anonymous letter (this time to the claimant) dated several months later; it purported to have been written and mailed by the same party who sent the first anonymous letter, but from a very distant locality and gave Jones a "pointer" to communicate with the business man to whom the other papers had been sent. Of course, the connection between the claimant and the "old" documents was then promptly made.

The reason for the decedent's wills in favor of the claimant, according to these documents, appeared to be a deep sense of gratitude for kind treatment accorded the decedent by Jones's parents, while the claimant was still a child. The old folks were represented as having given

him a home whenever (in the course of his wanderings) he happened to be in their vicinity.

To further bolster up and corroborate the foregoing papers, Jones produced a Bible (containing both Old and New Testaments) bearing an imprinted date considerably earlier than any of the letters or wills; this Book purported to have belonged to claimant's parents, and showed evidences of much use and considerable reference.

In this Bible, many passages (principally in the New Testament) appropriate to his alleged feelings of gratitude, purported to have been marked by the decedent,—a Jew; what purported to be his autographs were scattered in various places throughout the Book.

Some of the fly leaves of this Bible had been torn out, but on one that remained in it was a writing purporting to have been executed and signed by one of Jones's parents, giving a long and detailed account of the history of the Jewish peddler, and of his great gratitude towards these his friends, and of his financial intentions towards their child—the claimant.

So, when Jones got together the various wills and letters and Bible, the time was deemed ripe to present the claim to the estate of the peddler in the city of X. And it could be done, with the claimant saying only, "Here are the papers that give it to me; that is all I know about it." The papers alone remained; all human contemporaries seemed to have passed away.

But alas!

"The best laid schemes o' mice and men
Gang aft a-gley,
"And leave us nought but grief and pain,
For promised joy."

The various papers happened to come, for verification, into the hands of the author, as an examiner of questioned documents, and being of an inquisitive turn of mind, he took advantage of the opportunity thus offered, to investigate them; but he hardly "verified" them, in the expected sense of the term.

It turned out that the sacred evidences employed to bolster up the claim had been profaned. The Jew had not been studying the Gentile Bible, neither had he been the author of any of the writings ascribed to him; Jones's parent had not made the Bible record; the anonymous letter had not been mailed to Jones, as alleged. In short, all of the writings had been done by one and the same person, with the same ink, and at nearly the same time,—and that, after the death of the peddler and the advertisement for his heirs. The only genuine documents in the case were the paper used in the Bible, and the paper used for the wills, and for decedent's letters. The Bible was an old book; the other papers were nearly all simply fly leaves torn out of other really old printed books—and but two or three books, at that—as many as six leaves having come from a single book.

In the end, the estate went to the sole surviving next of kin of the peddler; this happened to be a deserving widow in the "old country," who had been gaining a very meagre livelihood for herself and children by the labor of her own hands, but who now could spend the rest of her days in comfort, and without the fear of want.

As to the fraudulent "wills," let us now bury the scheme; and, for an epitaph, let us adopt Burns's lines:

"Here lies a mock marquis, whose titles were shammed;
If ever he rise, it will be to be damned."

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Editorial Comment

Inflamed with the study of learning and the admiration of virtue; stirred up with high hopes of living to be brave men and worthy patriots, dear to God, and famous to all ages.—Milton.

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Edited by Asa W. Russell.

The Lawyer's Public Duties

FROM time immemorial the profession of the law has been the gateway to public preferment. The opportunities of the lawyer for public service have been coeval with government, and as extensive as the reign of law and order. Lawyers have made the world's laws, interpreted them, and enforced them. They have done more to upbuild the wondrous fabric of our modern civilization and to eradicate social injustice than all other professions put together.

As orators, statesmen, lawgivers, councilors, — as the "power behind the throne," the impelling force back of epoch-making movements,—their deeds fill the pages of history. No class of men can boast so long and illustrious an honor-roll as that of the bar.

As a result of this pre-eminence the lawyer has been often attacked and often slandered. It is true that in individual instances he has not measured up to an ideal standard. His work has been marred by human infirmities and limitations. He cannot be credited with infallibility, nor has he ever displayed omniscience. But it remains for his critics to disclose by what right they measure him by standards of perfection, or to show that there exists in the community any men or body of men better fitted to guide the destinies of the nation.

The President and Vice President of the United States are lawyers. Members of that profession occupy most of our high executive offices. The Judicial Department necessarily has been surrendered to them. A decisive majority of the Senators and Representatives in Congress are lawyers. In most of the state legislatures, it is safe to say, they constitute a majority no less decided. In view of these facts it is fitting that a solemn emphasis should be laid upon the obligations which lawyers assume in the public service.

This was recently expressed in an able and inspiring manner by Governor Harmon: "If the lawyer be called to legislative or administrative work," said the distinguished Ohioan, "his knowledge and training are quick assets. He can perceive the scope and wider bearings of a proposed law or change of law. He can make certain and accurate expression of the intended purpose. He knows men and the play of motives on conduct. He can present his views so as to impress them on others. He is skilled in detecting and exposing unsound arguments. And it is easier for the lawyer than for

most others to serve the public interest, and that alone. His whole life and training have been in representing others. And he can have no client so strongly to appeal to him as a people who have won their liberty and undertaken to govern themselves by the rule of equal rights, through chosen representatives. He can detect the insidious encroachments of special advantage and privileges. Seekers after these, through various devices of legislation or official conduct, are present on every side, plausible and persistent. The people who chose and trusted him do not appear. They are busy in field, workshop, office, and elsewhere, most of them working out the problem of existence. They have no protector but him. Sovereign though they may be, they are helpless, for the time being, if he in whom they put their faith forgets or deserts them.

"A lawyer in office," he concluded, "is under a double obligation. When he accepts the people as his client, he is bound to serve no interest but theirs. He takes the official oath besides. Lawyers, generally, who enter public life respond fully to this obligation. The exceptions which now and then occur are a warning. No betrayal is so dreadful or so certain to be exposed as that of a public trust. A lawyer is disgraced who, in his practice, represents interests which are adverse. Infinitely deeper is the shame of such double dealing in office. It is a species of treason, and an offense against an entire people is greater than one against an individual."

Not every lawyer, however, can go to a state legislature or Congress, or can actively shape the ongoing of public affairs. But although he may never hold or aspire to public office, he ought to realize that he is under a peculiar obligation to volunteer his services in times of political crisis, and to be ready at all times to contribute everything within his power to the improvement of the laws and of the processes of justice. Fortunately we have never been in this country without such public spirited lawyers; and if we ever have occasion to despair of the Republic, it will not be because wise counsel inspired by a lofty patriotism has been wanting.

The Law's Tangled Web

FORTY-eight state legislatures, in frequent operation, put forth, like gigantic looms, a tangled web of statutory enactments of wonderfully variegated pattern. In addition there is the great body of congressional legislation and, in an humbler sphere, a cloud of municipal ordinances. That men are not better than they are is no fault of the lawmakers. That half of them are out of court or jail is due either to a lax enforcement of the laws or to wonderful good fortune.

The Rural New Yorker recently showed how laws and penalties have been piled up so that a good, honest farmer, who has always tried to be a law-abiding citizen, incurred fines and penalties in a single day aggregating $400.

A few of his heinous offenses are cited, showing how that could happen. He was fined $15 for building a fire under a boiler that exceeded 8-horse-power without a fireman's license, and $25 for using a boiler that was not furnished with a fusible plug. Another fine of $25 was imposed for dressing a calf without a butcher's license, and $25 more for doing the work in his barn which had not been licensed as a private slaughterhouse. He was fined $20 for weighing the calf on scales that had not been sealed for twelve months. Then he was fined $25 for baiting his horse on the street without a permit, and $10 for turning the left curb when going around a corner. Later he was fined $25 for building a fire in the open air without a permit from the fire warden.

Some of these sound rather fanciful, but others might be cited right from the books of laws and ordinances without indulging in any imaginative flights. Against the town resident even a bigger bill could be made out if he got around at a lively pace and the police were vigilant.

A distinguished writer recently declared that the average American citizen was governed by about 16,000 separate and distinct statutes, with each one of which he is presumed to be familiar,—a presumption highly flattering to the

intelligence of the average proletarian. The body of our statute law is necessarily enormous, but were it not for the guiding and restraining influence which the legal profession has been permitted to exert upon the course of legislation by reason of their large representation in lawmaking bodies, it would be greatly augmented by freak and foolish enactments which erratic lawmakers are constantly bringing forward. In speaking of legislation of this class, Congressman James Francis Burke recently said:

"One of our state legislatures actually attempted the passage of a law making ground-hog day a legal holiday. A new member of another, in his desire to accommodate a constituent, indorsed and introduced, apparently without even reading, a bill to improve the alimentary canal. Among bills now pending is one to compel a man to take out a license before buying a drink, just as he has to take out a license to fish and a license to hunt. Another makes it a penal offense for a doctor to perform an operation for appendicitis if it afterwards appears that it was not absolutely necessary. Another makes it a penal offense for a man to put his feet on his desk while dictating to a young lady stenographer. Another taxes bachelors between the ages of twenty-five and forty-five. Another compels single men to give up the title of mister and wear one equivalent to the title of miss, to prevent single women from flirting with married men, supposing them to be single. There is another to punish with imprisonment profanity over the telephone. Another compels hotels to furnish bed sheets not less than 9 feet long. Another punishes railway ticket agents who fail to answer any question put to them by curious travelers."

"Bills have recently found their way into Congress to regulate the washing and ironing of shirts and collars; for the regulation of women's hatpins; making it a penal offense for a man to exhibit a clock in front of his place of business which is either fast or slow. A bill recently forwarded to a prominent member of Congress authorized its promoter to run a lottery on condition that from the conduct of it he agreed to pay off the national debt."

There is a crying need for less legislation;—for better considered legislation and for uniform legislation.

It would be a rare public service if the lawyers, who are often in a majority and who frequently control our legislative assemblies, should gently, but firmly, repress newly fledged legislators burning with a desire to write their half-baked ideas on the statute books of the state.

Better considered legislation will be had when all our lawmaking bodies, Federal, state, and municipal, maintain legal reference bureaus. These are new neither in practice nor in theory. In all some fourteen states have established bureaus of this kind in one form or another, *viz.* Alabama, Indiana, Iowa, Kansas, Massachusetts, Michigan, Nebraska, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Texas, Wisconsin.

The main object, of course, of any legislative reference library is the improvement of legislation by two means: (1) improvement in substance by the assurance of adequate *data;* (2) improvement in form through the employment of experts who will consider form alone.

It would undertake not merely to classify and catalogue, but to draw off from a general collection of literature *data* bearing upon a particular legislative project. It would index, compile, extract. It would acquire extra copies of society publications and periodicals, and break these up for the sake of the articles pertinent to a particular subject. It would clip from newspapers, and it would classify the extracts, the compilations, the articles, and the clippings in files so as to be available, topic by topic, at any given moment. Written memoranda by experts would be included.

A legislative reference bureau, next, would scientifically index the statutes-at-large. This work would be intrusted to a corps of experts, described as having "a substantial general education, legal training, and experience in this class of work, and selected solely with regard to those qualifications." Such a corps, once organized, would complete indexes not only of Federal and of state laws, but also of the laws of other countries. Finally, there comes the bill-drafting division, a

department which would require men familiar with "the antecedent and comparative legislation gained through the indexing, digesting, and compiling of it."

Reference bureaus have already been successfully established in Baltimore, Milwaukee, and Newark, New Jersey; and departments of statistics have for some years existed in New York, Chicago, and Boston. Los Angeles has a privately maintained bureau. Foreign cities years ago recognized the necessity of similar departments, to which might be assigned such duties as the following:

To have the custody of all documents, reports, records, etc., belonging to the city, and not in actual use by the departments.

To collect laws, ordinances, reports, and records from other cities.

To collect and make available, for the various departments, information relating to the practical operation of laws and ordinances in other cities.

To prepare or advise in the preparation of bills, ordinances, and resolutions, —primarily as to their contents, not as to their legal form.

Uniform legislation, both state and municipal, is greatly to be desired. The beginning already made in this direction is certain to extend with great rapidity. There is no good reason why the statutes and ordinances of each of our states and cities should not be an embodiment of the collective wisdom of all.

Maritime Death Statute

OUR readers will recall the exceilent article in the June CASE AND COMMENT on "The Present Federal Law of Damages for Death by Negligence at Sea" by Mr. George Whitelock, of the Baltimore bar, who, as a member of the committee of the Maritime Law Association, aided in drafting this proposed measure. As Mr. Whitelock stated in his article: "It is hoped that Congress may speedily grant the right of civil redress in death cases, provided by Lord Campbell's act and the Continental Codes. A private remedy for the negligent deprivation of life, existing throughout western Europe and in most of the American states, as well as in the Federal District of Columbia, it behooves the United States in their national capacity to assimilate their law to the European law and that of the component states of the Union."

The following is the final form of the death statute as prepared by the committee of the Maritime Law Association for submission to Congress:

A Bill

Relating to the Maintenance of Actions for Death on the High Seas and Other Navigable Waters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1. Whenever the death of a person shall be caused by neglect, default, or other wrongful act on the high seas, the Great Lakes, or any navigable waters of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, and dependent relatives, against the vessel, person, or corporation which would have been liable to a suit for damages by or in behalf of the decedent by reason of such act if death had not ensued; provided, that there shall be but one recovery by the person injured or by or in behalf of any of the persons mentioned in this section.

Section 2. The recovery in such suit shall be a fair and just compensation to the persons for whose benefit the suit is brought, and shall be apportioned among them by the court in proportion to the pecuniary damage they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

Section 3. Suit shall be begun within one year from the death of the decedent, unless during that period there has not been any reasonable opportunity for securing jurisdiction of the vessel, person, or corporation sought to be charged; provided, however, that after the expiration of a period of one year from the decedent's death, the right of action hereby given shall be deemed to have lapsed within ninety days after a reasonable opportunity to secure jurisdiction has been offered.

Section 4. If a person die as the result of neglect, default, or other wrongful act occurring on the high seas, the Great Lakes, or any navigable waters of the United States, during the pendency of a suit to recover damages for personal injuries in respect of such act, the personal representative of the decedent may be substituted for the decedent as a party, and the suit may proceed as a suit under this act.

Section 5. This act shall not affect the rights of shipowners and others to avail them-

selves of the provisions of the laws of the United States relating to limitation of liability.

Section 6. All suits for damages for the death of a person caused by neglect, default or other wrongful act occurring on the high seas, the Great Lakes or other navigable waters of the United States, wherever such death may occur, shall be deemed to be within the Admiralty and maritime jurisdiction of the United States, and in all suits in admiralty recovery of damages for death so caused shall be had only under the provisions of this Act; and where the death has been caused by neglect, default or other wrongful act occurring on the high seas, suit for damages shall not be maintained in the Courts of any State or territory or in the Courts of the United States other than in Admiralty.

Section 7. In suits under this act, the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent, and reduce the damages accordingly.

Section 8. Nothing in this act shall be construed to abridge the rights of suitors in the courts of any state or territory, or in the courts of the United States other than in admiralty, to a remedy given by the laws of any state or territory in case of death from injuries occurring elsewhere than on the high seas.

Aid for Convicts' Families.

We are glad to note that New Mexico, the second youngest state in the Union, is in advance of many of her sister states on the question of aid for convict's families.

Article XX., section 15, provides as follows: "The penitentiary is a reformatory and industrial school and all persons confined therein shall, so far as consistent with discipline and the public interest, be employed in some beneficial industry; and where a convict has a dependent family, his net earnings shall be paid to said family if necessary to their support."

Commissioner Meyer's Article.

It should be stated that the valuable paper by Honorable Balthasar H. Meyer, entitled, "Further Steps in Federal Regulation of Railways," which appeared in the June number of CASE AND COMMENT, was read by the author a few weeks since, before the New York Society for Ethical Culture.

Correspondence

Torrens Law Decision.

Editor CASE AND COMMENT:

I am happy to inform you that in the famous Torrens title registration action of Crabbe v. Hardy, Mr. Justice Crane, of the supreme court, sitting in Brooklyn, and upon my application as attorney for plaintiff, has to-day rendered a decision from the bench, overruling his former decision and allowing plaintiff to submit additional proofs on the question of the title sought to be registered.

Judge Crane also stated from the bench, that his previous decision had been misquoted or misunderstood, as he did not mean to imply that titles to real property could not be cured or perfected under the Torrens law, as § 390 of the act distinctly declares that "in any action under this article, the court may 'find and decree in whom the title to, or any right or interest in, the property or any part thereof is vested, whether in the plaintiff or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust, or interest, and may declare and fix the same," etc., "and generally in such an action, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this act."

This satisfactorily disposes of all the arguments and comments of the old title-insurance companies, which rushed into print, gleefully declaring that bad titles could not be good and marketable under the Torrens law.

GILBERT RAY HAWES.

New York City.

Plea of Guilty by Person Possibly Insane.

Editor CASE AND COMMENT:

A few days ago, in the state of Massachusetts, under claimed authority of law of that commonwealth, Richeson was killed in a state prison, by county officers, wno used for that purpose machinery and electricity bought and paid for by the people.

The man who was so killed was never tried at any time, by any court, or otherwise.

He was indicted by a grand jury, and being brought into court and having the indictment read to him, he informed the court that he was guilty as indicted, and on that unsworn evidence, given by a man against himself, at a time when there was doubt as to his mental soundness, a judgment of death was passed by a judge of a court, and his life was taken by the state by reason of that judgment.

This is an easy way to commit suicide. It is a proceeding of great danger, and it is to be hoped that this will not be considered a precedent in any jurisdiction, or repeated in Massachusetts.

So far as I know, this is the first instance of this kind in this country, and I beg to ask respectfully that if any others are known to you, or to any who reads this letter, the knowledge of same be communicated to the writer.

T. L. JEFFORDS.

Harper's Ferry, W. Va.

Among the New Decisions

"Reason is the source and mould of custom."

Conditional sale — negotiating purchase-money note — effect. Under a conditional-sale contract by which the title remains in the seller until performance of the conditions, the indorsement of the purchase-money note to a bank as collateral for a loan to the seller is held in the Washington case of Winton Motor Carriage Co. v. Broadway Automobile Co. 118 Pac. 817, to be an election to treat the note as an absolute debt, which vests title to the property in the purchaser.

As disclosed by the note appended to this case in 37 L.R.A.(N.S.) 71, there is a decided conflict among the authorities as to the effect of a transfer of a purchase-money obligation upon the title reserved in a conditional contract of sale. In some instances it has been held that such a transfer constitutes an election to treat the obligation as a debt, and that such an election vests the title to the property in the purchaser; in other cases it is held that a transfer of the obligation transfers the security, and vests the title to the property in the transferee; while in still other cases it is held that such a transfer leaves the legal title in the vendor. In a few instances the contrary holdings are reconcilable, but in some cases the courts have evidently proceeded upon theories which differ fundamentally from those adopted by other courts.

Covenant — restriction — enforcement. A remote grantee of a portion of a tract of land is held in Korn v. Campbell, 192 N. Y. 490, 85 N. E. 687, 37 L.R.A. (N.S.) 1, not entitled to enforce against a remote grantee of another portion a restrictive covenant in a grant of the entire tract before its subdivision, as to the character of buildings to be placed on the property, although the original grantor parted with his entire interest in all property in the neighborhood, where deeds and mortgages were given by a subsequent grantee in subdividing the tract, and foreclosure sales made on the various subdivisions, without any reference to such covenant.

And a covenant in a deed of a parcel of a tract being divided into city lots, which is stated to run with the land, and requires the covenantor to construct a specified building on the property which shall be a certain distance from street and side lines, is held in Berryman v. Hotel Savoy Co. 160 Cal. 559, 117 Pac. 677, 37 L.R.A.(N.S.) 5, not enforceable by a purchaser of an adjoining lot, whose deed forbids the placing of a building on the lot within the same distance from the street specified in the former deed, on the theory that the obligations are reciprocal.

These decisions are accompanied in 37 L.R.A.(N.S.) 12, by an exhaustive note discussing the cases dealing with the question as to who may enforce a restrictive covenant or agreement as to the use of property.

Criminal law — ex post facto law — changing rules of evidence. A decision, apparently of first impression, was made in the Court of Appeals of the District

of Columbia case of Frisby v. United States, 37 L.R.A.(N.S.) 96, holding that the repeal, after the commission of an alleged forgery, of a statute which prevents the use against accused of any discovery or evidence obtained from him by means of any judicial proceeding, so as to permit the use against him of the paper alleged to have been forged, which was originally exhibited by him in an equity suit, and of his testimony in that suit, is *ex post facto* and invalid, where the crime could not have been established without the aid of the record in the other suit.

Electricity — dangerous guy wire — injury to trespassing child. A corporation which permits a guy wire to get loose and hang against wires carrying a deadly current of electricity to its factory, at a place used, to its knowledge, actual or imputed, by children of the neighborhood as a playground, is held liable in the North Carolina case of Ferrell v. Dixie Cotton Mills, 73 S. E. 142, 37 L.R.A. (N.S.) 64, for the death of a child who comes in contact with the wire, although he is in fact a trespasser.

Eminent domain — power of municipality to take property devoted to public use. Authority conferred upon a municipality to exercise the power of eminent domain to take private property for the purpose of laying out streets is held in Edwardsville v. Madison County, 251 Ill. 265, 96 N. E. 238, not to include by implication authority to condemn land owned by the county and used for a poor farm.

The power to take property already devoted to a public use by a political or governmental agency is discussed in the note accompanying this case in 37 L.R.A. (N.S.) 101.

Another decision on the subject is Moline v. Greene, 252 Ill. 475, 96 N. E. 911, 37 L.R.A.(N.S.) 104, holding that charter authority to widen streets does not empower a municipal corporation to condemn for such purpose property already devoted to public use, such as a public library.

Fixture — standpipe — rights of mortgagee. That persons undertaking to erect a standpipe as part of a waterworks system, which is to be attached to the foundation by bole embedded in it, cannot, by contract to which the mortgagee is not a party, reserve a right to remove it in case of failure to pay the purchase price, as against rights under a mortgage covering after-acquired property of the water company, and which embraces its entire working plant, including franchises, is held in Tippett v. Barham, 103 C. C. A. 430, 180 Fed. 76, which is accompanied in 37 L.R.A.(N.S.) 119, by a note presenting the cases on the rights of a seller of a chattel, retaining title thereto or a lien thereon, as against existing mortgagees of the realty to which it is affixed by the owner.

Judgment — for principal — right of agent. That a bank which undertook to deliver to a carrier a package of money to be carried and delivered to another bank was the agent of the latter for that purpose is held in American Express Co. v. Des Moines Nat. Bank, 146 Iowa, 448, 123 N. W. 342, not to entitle it to the benefit of a judgment in favor of the principal against the carrier for failure to perform the service, which includes a finding that the carrier received the money, in an action by the carrier to hold the agent liable for fraud in placing waste paper instead of money in the package, and obtaining a receipt from the carrier for money.

This decision is accompanied in 37 L.R.A.(N.S.) 37, by a note collating the cases treating of a judgment between a principal and a third person as *res judicata* in an action between the latter and an agent.

Libel — report by agent on character — privilege. A report by one employed to ascertain the character of another as an insurance risk, and his fitness for the position of agent, which states that he had lost a position through carelessness, had paid too much attention to women and drank some, if made in good faith, and is seen only by those having an interest in the matter and confidential stenographers, is held in the Arkansas case of Bohlinger v. Germania L. Ins. Co. 140 S. W. 257, annotated in 36

L.R.A.(N.S.) 449, to be privileged, even when sent by the company requesting it, to the examiners and agents who had recommended the risk and employment, to check the correctness of their recommendation.

It may be stated as a general rule that defamatory communications between principal and agent, and between master and servant, are qualifiedly privileged when made in good faith and relating to a matter in which both are interested. But the question, in a majority of the cases at least, is one not so much of principle, as of application of a given principle to each particular state of facts.

Life tenant — rent — bonus for renewal. Under a will giving a certain person the net income of certain real estate during life, the same to be paid to others after the death of the life tenant, a bonus paid for extension of a lease is held in Re Archambault, 232 Pa. 347, 81 Atl. 314, to belong to the life tenant as of the time it was made, and cannot be distributed over the term of the lease to be paid at regular periods for payment of rent, together with the amount of rent then due, to the one entitled at that time.

The right as between life tenant and remainderman to rents from lease of property is discussed in the note which accompanies this case in 36 L.R.A. (N.S.) 637.

Lis pendens — specific performance — adjoining county. A suit for specific performance of a contract for the sale of land is held in Marshall v. Whatley, 136 Ga. 805, 72 S. E. 244, to be notice of the claim that the plaintiff sets up therein from the time it is commenced and docketed; and, if duly prosecuted and not collusive, one purchasing the land pending the suit is affected by the final decree rendered therein, though the suit is in a county other than the one in which the land is located.

The cases collected in the note accompanying this decision in 36 L.R.A.(N.S.) 552, show no dissent from the proposition that a suit for the specific performance of a contract in relation to real property is within the rule as to *lis pendens,* and that, in accordance with that rule, one who acquires an interest in the property pending the suit, from a party thereto, is bound by the result of the suit.

Master — sick benefits — color blindness. Whether color blindness is sickness or disease entitling one to benefits under a contract with a relief department, or under a policy of insurance indemnifying against accident or sickness, was considered apparently for the first time in the Nebraska case of Kane v. Chicago, B. & Q. R. Co. 132 N. W. 920, 36 L.R.A.(N.S.) 1145, holding that a railway night switchman becoming color blind during his employment is thereby disabled by sickness within the meaning of his employer's contract, that it will pay his sick benefits for a limited period while he is disabled by sickness or accidental injury, provided the fact be established by proof of acute or constitutional disease.

Mechanics' lien — materials for concrete forms and cofferdam. The lienable character of materials furnished for and consumed in the process of the work, that is, used for preliminary or temporary purposes, but not becoming a permanent part of the structure, was considered in Avery v. Woodruff, 144 Ky. 227, 137 S. W. 1088, annotated in 36 L.R.A. (N.S.) 866, holding that one furnishing lumber for the forms in which to mold the concrete for a building is entitled to a lien for its value, under a statute giving a lien to whomever furnishes material in the erection of a building or for the improvement of real estate, if the lumber is destroyed in the use, although it becomes no part of the building. So timber, lumber, and iron furnished by a subcontractor materialman for the construction of a cofferdam to make possible the construction of a permanent dam, and for forms for the concrete work in the dam, which are practically consumed in the use, or are retained by the owner of the dam, are held in Barker & S. Lumber Co. v. Marathon Paper Mills Co. 146 Wis. 12, 130 N. W. 866, 36 L.R.A.(N.S.) 875, furnished "for or in

or about" the erection of the dam, within the meaning of a statute giving a lien for materials so used.

Negligence — sudden emergency — measure of care. One is held in Lemay v. Springfield Street R. Co. 210 Mass. 63, 96 N. E. 79, not excused from all error of judgment by the fact that he is compelled to act immediately upon a sudden emergency, but he is required to use due care in view of all the circumstances.

The care required of one in a sudden emergency involving physical human peril is considered in an extensive note appended to the report of this case in 37 L.R.A.(N.S.) 43.

Parent — duty to furnish medical aid — religious belief. In a prosecution for a violation of that section of Okla. Comp. Laws 1909, § 2369 which provides, "Every parent of any child who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor," an instruction of the trial court that religious belief would not constitute a defense to such prosecution is held correctly given in the Oklahoma case of Owens v. State, 116 Pac. 345, annotated in 36 L.R.A. (N.S.) 633, where the few decisions upon the subject are collected. The view adopted by them is, that as a wicked intent is not an essential element of the crime, peculiarities of belief as to the proper form of treatment, however honestly entertained, are not necessarily a lawful excuse.

Partnership — accounting — illicit relations. The right to invoke the aid of a court to determine rights to property accumulated in common by parties living in illicit relations was considered in Mitchell v. Fish, 97 Ark. 444, 134 S. W. 940, annotated in 36 L.R.A.(N.S.)838, holding that one partner cannot avoid turning over to his copartner the latter's share of the proceeds of partnership property as found by a sale of it, and a voluntary accounting by him, although the partnership was formed at a time when the parties were maintaining illicit sexual relations with each other.

Principal and agent — authority to accept rescission of sale. One employed to solicit orders for, or make sales of, goods, is held in the Arkansas case of American Sales Book Co. v. Whitaker, 140 S. W. 132, to have no implied authority to take back goods sold and delivered, because of dissatisfaction on the part of the customer.

The implied power of an agent to assent to a rescission of a contract is considered in the note which accompanies the report of this case in 37 L.R.A. (N.S.) 91.

Railroad — pedestrian at crossing — duty to look at most advantageous point. It is held in Wallenburg v. Missouri P. R. Co. 86 Neb. 642, 126 N. W. 289, that it is the duty of a pedestrian upon a highway, in approaching a railway crossing, to look and listen for moving trains before attempting to cross the railway; but if he does so, he is not necessarily negligent because he did not look at the most advantageous point, and where, if he had taken heed, he probably would have seen an oncoming train, and avoided injury.

The duty of a traveler approaching a railway crossing, as to place and direction of observation, is considered in an extensive note appended to this decision in 37 L.R.A.(N.S.) 135.

Railroad — right to let right of way for warehouse. It is determined in the Iowa case of Anderson v. Interstate Mfg. Co. 132 N. W. 812, that the owner of the fee cannot complain of the letting of a railroad company having an easement over his property for a right of way, of space out of it for a warehouse to a manufacturer, the principal part of whose product is shipped over the railroad, the warehouse being desired to facilitate shipments, although all articles placed in the warehouse are not shipped over the railroad.

The uses to which a railroad right of way may be devoted as against the owner of the fee are considered in the note accompanying the report of the above case in 36 L.R.A.(N.S.) 512.

Sale — seed — liability. It is a general rule, denied in but few jurisdictions, that the sale of seed as and for a certain kind, that is a sale by description, constitutes a warranty of the seed. In some jurisdictions it is treated as an express warranty, and in some as an implied warranty, while in others it is not regarded as a warranty, but as a condition the breach of which gives rise to an action in the nature of a breach of warranty.

That no liability in damages exists because seed does not prove to be of the variety specified in the sale, where the contract provides that neither the seller nor his employees shall give any warranty, express or implied, as to description, utility, productiveness, or any other matter, of any seeds, is held in Leonard Seed Co. v. Crary Canning Co. 147 Wis. 166, 132 N. W. 902, which is accompanied in 37 L.R.A.(N.S.) 79, by a discussion of the cases on the liability of a vender of seeds.

Another recent decision on this subject is reported in 64 Wash. 159, 116 Pac. 666, 37 L.R.A.(N.S.) 89, holding that one who sells unfit seed, knowing the purpose for which it is to be used, is liable for damages in case the crop is lost because of such unfitness.

Sale — condition — retaking property — destruction — effect. A novel question involving the rights of the parties to a conditional sale, where the property is destroyed while in the possession of the seller, was presented in the Arkansas case of Hollenberg Music Co. v. Barron, 140 S. W. 582, 36 L.R.A.(N.S.) 594, holding that the destruction, without fault of either party, of property retaken by a contractual vendor to hold until payment of the purchase price, does not destroy his right to enforce payment of the balance of the purchase money which the purchaser has unconditionally promised to pay.

Sale — right of bailee to fill his own order. An unusual question dealing with the right of one in possession of another's property to appropriate it to an executory contract with the latter was presented in Atlantic Building Supply Co. v. Vulcanite Portland Cement Co. 203 N. Y. 133, 96 N. E. 370, holding that a bailee for hire to transport and store material for the bailor, who contracts to purchase a quantity of such material from the bailor, cannot fill his order from the material in his possession, without the consent of the bailor, and his attempt to do so will justify termination of the bailment.

Two earlier decisions upon the question are set out in the note accompanying the foregoing case in 36 L.R.A. (N.S.) 622.

Recent English and Canadian Decisions

Criminal law — forgery — acceptance in firm name by partner without authority. A partner who, with intent to defraud and without lawful authority or excuse, accepted a bill of exchange in the firm name, was held in Rex v. Holden [1912] 1 K. B. 483, to have accepted the bill in the name of another person within the meaning of the provision of the forgery act, that whosoever with intent to defraud shall accept any bill of exchange, by procuration or otherwise, in the name of any other person, without lawful authority or excuse, shall be guilty of felony.

Criminal law — vagrancy — visible means of support. One who at the time of his arrest has in his pocket $28, mostly gathered by begging, is held by the Ontario court of appeal in Rex v. Munroe, 25 Ont. L. Rep. 223, to be "without visible means of maintaining himself," within the meaning of the statute against vagrancy; the court saying that the statute intends something more than the mere possession of temporary means of supplying one's self with food and lodging for a few days, and that the convicting magistrate is entitled to look upon all the circumstances surrounding the

possession of money, and to form his own conclusion upon them as to whether the defendant is possessed of a legitimate means of livelihood.

Descent and distribution — parties entitled — "double cousins." The fact that a person is what is known as a double cousin of a decedent, their respective fathers being brothers, and their mothers sisters, will not entitle him to a double share of the estate, the degree of consanguinity being no different in such case than that of other cousins. Troop v. Robinson, 45 N. S. 145.

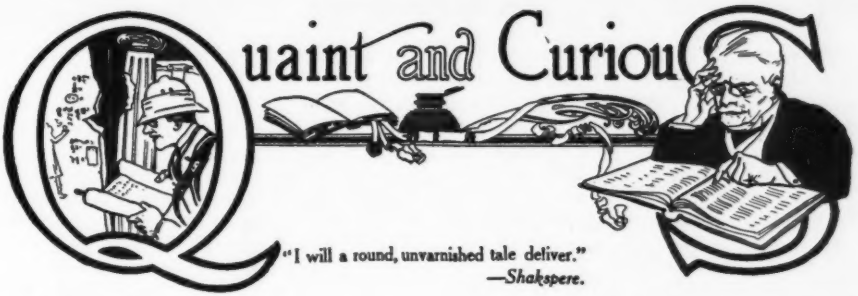
Sales — C. I. F. contract — terms net cash — payment against shipping documents. Under a contract for the sale of goods to be shipped to the buyer, "at the rate of 90 shillings sterling per 112 lbs. C. I. F. to London, Liverpool, or Hull. Terms net cash" (the initials signifying that the seller is to contract for freight and effect insurance) the seller is not obliged to wait until the physical delivery and acceptance of the goods; but is entitled to payment upon shipping the goods and tendering to the buyer the bill of lading and insurance policy. E. Clemens Horst Co. v. Biddell Bros. [1912] A. C. 18.

Sheriff — accountability for interest received on money in his custody. That a sheriff is accountable to the owner of money deposited with him as bail upon arrest for debt, where he, although under no obligation to do so, has deposited it in a bank at interest, for the interest so received by him, is held in McKane v. O'Brien, 40 N. B. 392; the court taking the ground that in such a case the sheriff is not a mere depositary, but is a trustee, and as such is accountable for accretions to the trust fund.

Taxes — succession duty — situs of deposit in branch bank. A deposit in the Brunswick branch of a bank having its headquarters in London, is held by the English privy council, in Rex v. Lovitt [1912] A. C. 212, to have a local situs in New Brunswick so as to be liable to pay succession duty under the New Brunswick act by virtue of which all property situate within the province is liable to such a duty.

Trespass — justification — actual necessity. The case of Cope v. Sharpe [1911], 2 K. B. 837, heretofore noted in this column as holding that the necessity which will justify a trespass must be actual, has been reversed by the court of appeal in [1912] 1 K. B. 496, where it is stated that, although an interference which otherwise would constitute an actionable trespass cannot be justified by mere proof on the part of the alleged trespasser of his good intention, and of his belief in the existence of a danger which he sought by his act of interference to avert, but which in fact did not exist at all, it is not necessary, in order to justify a trespass, to show that but for the interference the person or property which the trespasser sought to protect must have suffered harm or loss; but that, there being a real and imminent danger, it is a good defense if the means taken to avert it were reasonably necessary in the sense that they were acts which, under all the circumstances of the case, a reasonable man would do to meet such a real danger.

Wills — acceleration of subsequent estate by disclaimer of prior estate where contingent remainder intervenes. A testator devised certain property to the use of a son for life, with remainder to the use of his first and other sons successively in tail male, with remainder to a grandson for life, with remainders over. The son disclaimed the estate for life limited to him. He was married and his wife was living, but he had no issue and there was no prospect of any. Upon this state of fact the question arose in Re Scott [1911] 2 Ch. 374, as to whether the grandson's estate was accelerated by the disclaimer, subject to be determined by the birth of a son to testator's son. It was held that the estate limited to the grandson could not take effect so long as there was a possibility of someone's becoming entitled under the prior limitation, but that the rents and profits of the disclaimed estate during the life of the son so long as he had no male issue formed part of testator's residuary estate.



"I will a round, unvarnished tale deliver."
—*Shakspere.*

A Poetic Will.

"Be comforted, the world is very old,
And generations pass as they have passed,
A troop of shadows moving with the sun."

These words from the poet Longfellow, with the remainder of the stanza from which they are selected, constitute one of the provisions of the will of Mrs. Martha A. Edwards, mother of Street Commissioner Edwards, of New York. Mrs. Edwards, in explanation, wrote:

"I desire to perpetuate the following quotation from Longfellow as best expressing my sentiments towards my children."

The Law of the Road. It is stated that the French are proposing to adopt the English law of the road for automobiles. That is, to turn to the left. It is singular that we in America should have changed from the English habit established from time immemorial. The driver of a buggy or a horse vehicle of any kind sits to the right and can see both his own wheel and the approaching one, and thus guage his distance from it. This he cannot do well when driving to the right.

The law of the road
If you'll listen awhile
I will give in the words of a song.
For when you go left,
It is then you go right,
And when you go right you go wrong.

That is the old English law of the road. It is good. Let English speaking people all over the world adopt it.

Trials and Trials. "Your Honor, I'd like to be excused from serving on this jury," said Roy Simpson, of Laingsburg, at the opening of the May term of the Shiawassee court.

"I don't like to let you go," returned Judge Miner. "It is the duty of every citizen to perform jury duty willingly when called upon."

"Well, your Honor, I am in business and I haven't anyone to attend my office."

"I can hardly let you go," objected the court. "Either get someone or close your office. It should be easy to hire some person for the few days this term will last."

"But, your Honor," interposed Simpson, earnestly, "I am also assessor for the village of Laingsburg and that is a work which must be performed."

"That can wait a few days, also," responded the court, firmly. "Next!"

"But, judge," said Simpson again, as he blushed to the tips of his ears, "I'm going to be married on the first of June, and the time isn't any too long to prepare."

"There are trials and trials," mused the court, with a twinkle in his eye. "Under the circumstances I shall excuse you from the trials to come in court."

"Thank you, sir," said Simpson, still blushing.

"Ha, ha!" laughed the other jurors, as the embarrassed bridegroom-to-be retreated.

"Order in the court!" said the sheriff. But he smiled, too.

Hope Deferred. John W. Stevenson, Jr., the pioneer tin-plate magnate, caused continuous roars of laughter while testifying before the New York hearing of the government's suit to dissolve the United States steel corporation. Under cross-examination by Lawyer Lindabury, of the trust, he told of Henry Bessemer's first experiments with Besse-

mer steel. Becoming a trifle wearied at Lindabury's questions, Stevenson said of Bessemer: "He did na sookseed for a lang while. He were lak a looyer." This brought a laugh from everybody in the room but Lindabury.

Pioneer Law Court. The following incidents in pioneer life over sixty years ago, almost within the shadow of Alton, amid the then primeval valleys and gentle hills of South Piasa township, in Jersey county, will interest many old Altonians, writes Holley Glenny in the Alton Telegraph. The characters that figure in this true story come to the reader in their true names. They have all been gathered to the bosom of their God, and with all their weakness and circumscribed lives and education they lived up to the standards of their lights.

In the late forties, these primitive people lived the lives of the pioneer. Their necessities were liberally supplied by the toil of tneir own hands, and luxuries to them were unknown. They did not possess the culture or refinement that enables us to gloss over or color the failings of life, but they were frank, open hearted, but firm in their beliefs, and they lived their allotted span and were gathered to their fathers, at peace with all the world. Their religion was of the simple, quiet, unassuming sort that was a part of their lives and met all their spiritual needs to their satisfaction. These lives were pure and childlike, and as neighbors they knew little selfishness. They were earnest workers in the church, and though deficient in education many of them were singularly gifted in prayer and roughly eloquent in their appeals in the cause of the Master, and when on the platform or on their knees were not at all squeamish in personally calling up the stray sheep who wandered in the rear.

The scene opens to this true story with Brother Hutchcraft's accusation against Brother Bennett of stealing his hogs. A good many years ago, a local reporter on an Alton paper, one day caught a cinch, and gave it to the Altonians as follows: "There appeared wandering through the streets of Alton, a pair of little but caloric bulls hauling a load of cordwood and driven by a man who was barefooted. The bulls became obstreperous and ran away, but the driver followed them up, and, holding them one at a time by the tail, lambasted their ribs until order reigned in Warsaw. The barefooted man with the little bulls was Brother Hutchcraft. He had once been a wild and woolly worldling, and considered as one warming his feet upon the brink of perdition, but under the agonizing prayers of Rev. Mose Pote he jumped over into Beulah land. He was a stock raiser and claimed all the hogs that ran at large on the banks of the Piasa. The grunt of the porker indicated to Brother Hutch, that his bacon was near him. One day Brother Bennett made a swine roundup and gathered into his pens a goodly array of hogs. When Brother Hutch heard of this moving of animated pork into the pens of Brother Bennett he proceeded at once to Delhi to interview Brother Fuller, who was a "justice of the peace," and there accused Brother Bennett of stealing his hogs. The squire informally notified Brother Bennett that he would be at his home on a certain day to investigate the alleged hog-stealing charge, and advised him to be ready. Brother Hutchcraft at once hunted up Rev. Mose Pote, who, being gifted in prayer, would, he believed, be a good lawyer on the occasion. Brother Bennett, alarmed at the outlook, sought Deacon Pembroke to act in like capacity and save his bacon. On the appointed day they all assembled with their witnesses at Brother Bennett's. Sister Bennett, with Christian love warming her womanly heart, laid herself out in giving the entire crowd, including the prosecution, a splendid dinner. Hospitality was hospitality with her, and the man who had charged her liegelord with stealing his hogs fared as well as the others. Here was a gem of simon-pure Christianity that is seldom met with today amid advanced spiritual life. After dinner they all assembled under a shady apple tree, and Squire Fuller arose and stated that in a few days the annual camp meeting held on Brother Bennett's farm would be held, and he urged then all to settle their differences in the spirit of charity and brotherly love, so that with one heart and one mind they might move

on the cohorts of Satan with a unanimity that would be the tocsin of victory. He then knelt down and prayed before opening court. He prayed for Christian love among neighbors, and a charitable view of each other's frailties, and when he had finished he called on Deacon Pembroke, Brother Bennett's lawyer, to pray. The deacon prayed unctuously that the innocent might rise and shine like the noonday sun and that the stony hearts of false accusers might be melted. During this prayer Rev. Mose Pote, Brother Hutchcraft's lawyer, excited by powerful religious emotions, kept injecting his hearty amens into the points of Deacon Pembroke's prayer, and Brother Hutch's heart fell, for he thought the Rev. Mose was going over to the enemy. When they arose from their knees Brother Squire Fuller, turning abruptly upon Brother Bennett and without any preliminary remarks, said: "Brother Bennett, you have been accused before me of stealing Brother Hutchcraft's hogs. What have you got to say about it before I pass judgment? Are ye guilty or not guilty?" Brother Bennett arose and stretching his arms toward heaven, in a trembling voice, said: "Before these witnesses I say I ain't guilty. I am a Christian trying to lead a life that looks down on hog stealing, and I call all the angels of heaven to come down here and witness the truth when I say I didn't steal Brother Hutchcraft's hogs." Brother Hutchcraft, who had lost faith in Rev. Mose Pote through the amen indorsement of Brother Pembroke's prayer, jumped to his feet and shouted: "Keep them are hogs, Brother Bennett, if you are going to call on such witnesses as them," referring to the angels. This settled the matter and Squire Fuller pronounced the benediction and they all separated to meet a few days after at the old camp grounds, where under the leafy canopy and the twinkling stars there arose in plaintive melody the good old camp-meeting hymns of the long ago.

Actions for Breach of Promise. The recovery of £100 damages by a plaintiff, a young man of five-and-twenty, in an action for breach of promise of marriage brought against a widow, a grandmother, in her fifty-fifth year, which was heard by Mr. Justice Grantham and a jury, states the Law Times, "is one of the rare instances in which men are successful in actions for breach of promise of marriage, which has not infrequently been described as a woman's action.

"On the 6th of May, 1879, the late Lord Chancellor Herschell, who was then member of the city of Durham in the House of Commons, moved a resolution, which was carried—the ayes being 106 and the noes 65—in favor of the abolition of the action. In the debate on that occasion the late Mr. Cole, Q. C., stated that he had been counsel at the Bristol assizes with the late Mr. Justice Montagu Smith for a man who was plaintiff in an action for breach of promise of marriage, the plaintiff being awarded £300 damages. In this case the defendant, however, had subjected the plaintiff to shocking treatment, and broke off her engagement to him under circumstances which were accompanied with the greatest provocation and personal insult.

His success as an advocate for a lady who was a defendant in an action for breach of promise of marriage terminated the Irish career of Mr. Charles Phillips, the biographer of Curran and the famous Old Bailey advocate in the forties and fifties of the last century, who is now principally remembered as the counsel for Couvoisier, the assassin of Lord William Russell, and for the fierce controversy which arose from his conduct in that trial. Phillips, who had very early attained a considerable reputation at the Irish bar, and was a member of the Connaught circuit, was briefed as junior counsel with O'Connell, who came down special for the defendant, a wealthy old lady, who was sued for breach of promise of marriage. At the Sligo assize, O'Connell lost his voice and was unable to speak to evidence. On Phillips this duty devolved. He poured scorn on the plaintiff, a young naval officer, who was only attached to the lady for her money, and then spoke in terms of such a terrible realistic character of the faded charms and advanced age of the defendant that he secured for her the verdict while deeply wounding her vanity. The successful litigant awaited her

counsel outside the courthouse. She had provided herself with her coachman's whip, with which she lashed Phillips from the courthouse to his lodgings. This incident, which exposed him to very considerable ridicule, led him to abandon the profession of the bar in Ireland. He was called to the English bar, taken up by Brougham, offered an Indian chief justiceship, and finally appointed a commissioner of insolvency."

In Paris the question has been raised, "Should mature women be barred from bringing breach of promise actions?" This question is suggested by a decision of the French courts.

A woman of thirty-nine brought an action for breach of promise of marriage against a widower of seventy-nine, who had a family of grown-up children. The court dismissed her case on the following grounds:

"Whereas, owing to her age, plaintiff had sufficient experience of the world to know that there is an element of uncertainty in every matrimonial scheme, and that up to the wedding day each party is still free to withdraw, especially in the present case, when the future bridegroom was a man already of advanced age, with a family which might—and, as a matter of fact, did—bring pressure to bear to break off the match."

Said a well-known lawyer, on hearing the decision: "If the rule is strictly enforced, hilarity and gayety will vanish from European courts."

Marry as Celibates. A "purity marriage," in which the contracting persons take a vow of celibacy prior to the performance of the ceremony, is contrary to the spirit and letter of the laws of the land. Such in effect was the opinion handed down by Judge Orlady of the superior court in the strangest case ever presented to him for adjudication. It was shown in court that the husband and wife in the case had lived together fourteen years, but had remained faithful to their antenuptial vow of celibacy.

The case was that of Mrs. Clement Remington H. Cunningham against her husband, a business man, for separate maintenance and an injunction to restrain him from disposing of his property. The court ruled in favor of the husband.

Mr. and Mrs. Cunningham were married on December 4, 1895, and lived with the wife's family continuously, with the exception of six months, until December 12, 1909, when there was a quarrel and Cunningham left his wife. In justification of his departure the husband said in court that the marriage contract never had been fulfilled. He said that this had been the wish of his wife.

Mrs. Cunningham explained that about a year before the marriage she and Mr. Cunningham took an oath of celibacy. "It was not taken," she said, "before any officer of the law. We were in the parlor and knelt together."

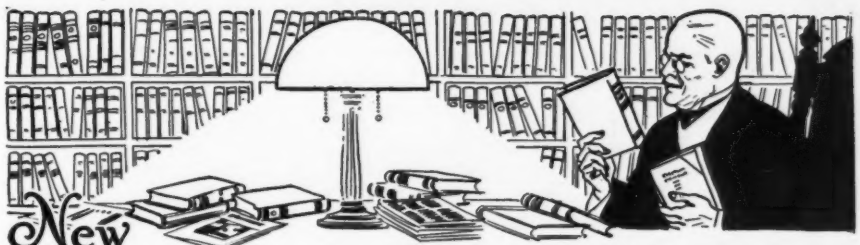
Judge Orlady pointed out that Mrs. Cunningham had an adequate remedy as to an allowance for support under an act other than the one she invoked.

"It is not the policy of the law to encourage the living apart of husband and wife while the marital relations exist in force," said the court. "After the marriage contract is entered into, the rights, duties, and obligations of the parties are fixed by law. Our whole social system is founded on the theory of husband and wife living together as such."

Finis. Some amusing suggestions for an epitaph on a solicitor are made in the course of a competition in the columns of a contemporary. One is:—

> "Much of earth I have conveyed,
> Now to earth I am conveyed."

Another simply runs: "Habeas Corpus." Why not "No attorneys allowed here, so I appear in person?"—A Chance Medley.



New Books and Recent Articles

"And what of this new book?—*Sterne.*

Anomalies of the English Law. By Samuel Beach Chester, of the Middle Temple. (Little, Brown, & Co., Boston, Mass.) $1.50 net.

The chapters of this book consist of a series of most readable and instructive essays pointing out the anomalies of the English law in respect to such matters as "Divorce," "Libel and Slander," "Imprisonment for Debt," "Death and Burial," "Wills," "Capital Punishment," "Client, Solicitor, and Counsel," and other subjects.

In treating these topics Mr. Chester makes reference to some incidents which have occurred in this country, and to some American customs. Concerning the Thaw Case he says: "The instinct to kill in a man confronted by another who has been intimate with the woman who became his wife must be very strong, particularly among heated temperaments. It is not necessary, one may perhaps assume, to have "brain storms," paranoia, or incipient insanity, to produce the exact state of mind, under given circumstances, which prompted the shooting at Madison Square Garden. One somehow feels that injustice has been done the "murderer" by stamping him with the brand of lunacy. It was the only alternative, however, as the case went, to the electric chair."

In suggesting that counsel should be enabled to advise a client without the intervention of a solicitor, the writer states: "In France, there is the distinction between the *avocat* (or barrister) and the *avoue* (or solicitor), and yet there appears to be no hindrance upon the freedom of the *avocat* in respect of an intermediary. In America, the counselor-at-law, or "attorney-at-law," as he is called in Pennsylvania, unites in his legal qualification the right to practise as a solicitor or as a barrister or as both. As a matter of fact, an American law office generally contains several counselors-at-law, who divide the court and office work up between them. In point of right, however, the counselor-at-law is perfectly justified in carrying on the joint profession of a barrister and a solicitor. This system is not recommended here, though it seems to work well in America. . . . If a barrister of the court of appeals of Paris, or a member of the New York bar, can be approached direct, there is reason to suppose that the system suggested is neither gross nor one calculated to destroy prestige."

There is much in the volume to interest an American reader. The author's criticisms, although pointed, are calm and judicial in tone. It is to be hoped that his work may lead to the correction of some of the inconsistencies which he has pointed out.

A Treatise on the Constitution of Georgia. By Walter McElreath of the Atlanta, Ga. Bar. (The Harrison Company, Atlanta, Ga.) $6.

The great inconvenience in ascertaining with certainty what was the organic law with respect to a given proposition at a given time led the author of this work to undertake its preparation, with the primary purpose of exhibiting the fundamental law of the state, rather than furnishing a commentary upon it. But as the work progressed he found it expedient to make a more exhaustive treatment of the subject. It has been the writer's aim to show the origin, evolution, and meaning of all of the provisions of the state's organic law. This has been accomplished by the aid of historical notes and by the citation of cases directly involving the constitutional provisions in question.

The work does not pretend to be more than a collection and arrangement of material for a study of the constitutional history of Georgia and as a means of interpreting the present Constitution; but it contains much rare and almost inaccessible material, and is admirably adapted to encourage a study of the organic law and fundamental institutions of the state. This is a subject peculiarly worthy of study. As the author points out: "Georgia was the only one of the original states founded and chartered after the English Revolution and the practical completion of the English Constitution by the great provisions of the Bill of Rights. . . . From the surrender of the government of the colony by the Trustees, until Georgia set up an independent government for herself, by the promulgation of a provisional Constitution in April, 1776, was but twenty-four years,—a period in which the germs of political institutions were in rapid gestation, but too short for their

birth; hence when an independent government was born in Georgia, it sprang more directly out of the common law and the English Constitution than that of any other American state."

The volume is a rich mine of information, and will prove especially attractive to the thorough lawyer.

Annotated Index to General Statutes of Tennessee. By Norman Farrell, Jr., and J. S. Laurent, of the Nashville Bar. (Marshall & Bruce Co., Nashville, Tenn.) $—

This is an index of the public statutes of the state of Tennessee from 1897 to 1911 inclusive. The various enactments of that period are grouped under an appropriate classification, with a brief statement as to their purport. Its aim is to render the various statutory provisions accessible by enabling the inquirer to speedily locate any particular act. In this age of multiplicity of statutes, ready reference is a matter of increasing difficulty, and a sure and accurate guide in this regard cannot fail to be highly useful. This index was originally undertaken for private use, and has been found so helpful that it is now offered to the members of the profession. The work is attractive in form, and seems to have been well done. It contains citations to the reported decisions of the Tennessee and Federal courts relating to the acts indexed as well as to the private acts passed during the period covered by the work. This constitutes a valuable and noteworthy feature.

A Chance Medley. (Little, Brown, & Co., Boston, Mass.) 374 pp. $1.50 net.

This volume consists of an edited reprint of extracts which appeared under the heading "Silk and Stuff" in the Pall Mall Gazette during the years 1893–1909. The material has been classified and arranged in appropriate chapters under such titles as "Historical," "The Inns of Court," "Judges and Lawyers," "Trials and Appeals," "Legal and Constitutional Points," and "Legal Stories." Perhaps there has never been gathered together before in a similar compass so many quaint, amusing, and instructive incidents pertaining to English law, lawyers, and courts. The paragraphs are not only entertaining, but contain hints of practical value. The reader feels that he has been admitted to an inner circle composed of those learned and brilliant men who have made the English bar famous. It is excellent reading for vacation time.

Penal Servitude. By E. Stagg Whitin, Ph.D. (National Committee on Prison Labor, New York.)

This work deals with the problem of prison labor and discusses it in the light of the most advanced thought of the time. We will attempt in brief compass to express the salient views of the author.

The status of the convict is that of one in penal servitude,—the last surviving vestige of the old slave system. The economic value of the labor of the wayward individual has directly affected the methods of punishment, substituting prison industries, carried on largely for the benefit of contractors, in place of the galley and mine, banishment and death.

The general control exercised by the state over its convicts is a matter left to the states themselves, and is largely affected by local conditions and customs. . . . Where, through the wise exertion of executive power, the controlling of the penal institutions has been taken entirely out of politics by the appointment of men whose sole interest is the perfection of administration rather than partisan advantage, a control of a superior type has been possible.

The principles underlying prison labor reform are to be found in the establishment of a central bureau of clearance between the productive side of the state's productive institutions and the maintenance and supply departments, under state, county, or municipal control. This central bureau of clearance must have power to prohibit all purchases of goods in the open market that can be manufactured by the state's productive institutions. . . . The efficiency of the controlling power will rest upon the personality of the individuals in control, their cleverness as business managers, and their singleness of purpose,—the proof of which will be found in the results. The board of control should therefore be given full power in everything pertaining to the industries, with only such limitations as would prevent the control over the convict being abused to the detriment of his reformation. . . . The board of control should be like the board of trustees of a university, and have referred to it both the educational and the purely business sides of the administration. . . . The regulation of the curriculum, partaking in this instance of little academic work and a large percentage of productive labor education, should be entirely in the hands of the board of control, and the rewards and demerits worked out by it. The wage system under which the inmates are to be employed would therefore be based upon the educational and developmental value in their relation to the production of efficiency, and the retention of the interests of the convict in the welfare of his family, and the restitution to be made for his crime. The placing of full power in the hands of the controlling authorities would make possible the development of the wage of the convict in proportion to the industrial development of the institution.

The awakening of public sentiment to the appreciation of the educational duty of the penal institutions, and the encouragement and praise given for improved administration, will do much to insure good results.

In a word the answer of what to do is to be found in:

The establishment of a bureau of clearance, with full powers over purchases of state, county, and municipal departments.

The fixing of definite responsibility for institutional management with adequate publicity.

This book should be read not only by the penologist or sociologist, but by all men of humanitarian impulses who would aid in alleviating the miseries and in uplifting those errant members of society upon whom the law has laid its heavy hand.

Dr. Whitin had at his disposal the result of the investigations and studies carried on by the National Committee on Prison Labor, and has presented his material with rare judgment and discrimination. His suggestions are entitled to great weight. We confidently predict that they will be largely embodied in the legislation of the future.

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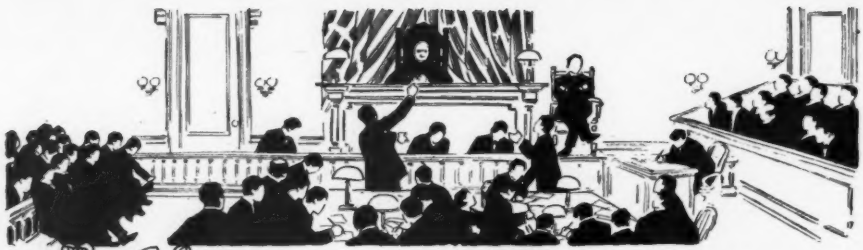


Judges and Lawyers

A Record of Bench and Bar

Hon. Isidor Rayner

UNITED STATES SENATOR FROM MARYLAND

ISIDOR Rayner's name finds honorable mention upon the pages of the state and nation's history. An enumeration of the men of the present generation who have won honor and public recognition for themselves, and at the same time for the state to which they belong, would be incomplete were there failure to make prominent reference to his name. He holds distinctive precedence as an eminent lawyer and as one who occupied most important and trying positions during one of the most memorable epochs in the political history of the country, during which times he bore himself with such signal ability and honor. He occupies a foremost place in his profession, and in public life, through his great power of eloquence and intellectual individuality. He has taken a leading part for years in the great political contests that have been waged in the country.

Mr. Rayner was born in Baltimore, April 11, 1850, and completed his education at the University of Virginia, where he continued his studies from 1866 to 1870, pursuing the academic course for three years and the law course the last year. While at college, Mr. Rayner was a member of the Jefferson Society, and at the age of eighteen was its anniversary orator, choosing "Religious Liberty" as the subject of his address, which was delivered before one of the largest audiences ever gathered in the halls of the university. On leaving that institution, Mr. Rayner became a law student in the offices of Messrs. Brown and Brune, of Baltimore, and shortly afterward was admitted to the bar. No noviate awaited him, and in a short space of time he had secured a large trial practice. A laborious student of his profession, thoroughly versed in the Maryland authorities and practice, he has wielded great power and influence before courts and juries in his state, and has been engaged in much of the most important litigation tried in the nisi prius and appellate courts.

His prominence, however, lies not alone in the line of his profession, but also in the important political posts he has filled. In 1878 he was elected a member of the Maryland legislature, which was one of the most memorable that ever met at Annapolis. It numbered among its members such men as Montgomery Blair, Philip Frank Thomas, and others of distinction. Mr. Rayner was the acting chairman of the judiciary committee during the session. After the session was over, Mr. Rayner devoted himself entirely to his practice until 1886, when he received the nomination for state senator, and was elected. As a member of the senate, his principal work was again on the judiciary committee in framing

legislation, and in the leading part he took in the debates on the floor. In the fall of 1886 he received the nomination for Congress, was elected three terms to that body, receiving a unanimous nomination each time, and declining the nomination for a fourth term. During the first term Mr. Rayner took a leading part in the debates, and in the second and third term he gradually advanced until his position became a prominent one before the people of the country. He served upon the committees of foreign affairs, coinage, weights and measures, and commerce and took a leading part in the discussion of all important measures on the floor. He was the chairman of the committee on organization, and conducted the famous contest for the repeal of the Sherman silver bill, opening the debate upon the repeal with a speech that attracted great attention throughout the country. In the fall of 1899 Mr. Rayner was elected attorney general of Maryland, after one of the most hotly contested political campaigns waged in that state between the parties. Henry Watterson thus describes Mr. Rayner in the Louisville Courier-Journal, after one of his speeches in Congress:

HON. ISIDOR RAYNER

"If I were asked to select a member of the fifty-second Congress that is the coming statesman of the future, without hesitation I should name Honorable Isidor Rayner, of Maryland. He is as brilliant as Judah P. Benjamin, and, as an orator, has no superior in either House. His speech yesterday on the bill against trusts captivated the House and the galleries. It compares favorably with anything that has ever been delivered in Congress since the days of the giants of the Augustan age. It was argument and eloquence combined, and when it was delivered the most noisy body in the world became hushed, the members crowded about him, the spectators in the gallery leaned over so as not to lose a word, and when he closed, the speaker did not attempt to control the applause that came from the House and galleries. Mr. Rayner's particular power as an orator in court and upon the hustings consists in his originality and force of thought, in his incisive and classic diction, and in the intense and impassioned earnestness with which he undertakes any cause that he represents. He has for years been recognized as one of the leading speakers upon the hustings for the Democracratic party in the country, notably so in the two campaigns in which Mr. Cleveland was a candidate for president, Mr. Rayner conducting the canvass with Vice President Stevenson in the Eastern States. In Maryland he has been for some time the leading public speaker of the Democratic Party.

Mr. Rayner has been in the Senate now for some eight years, and is now serving in his second term. He has taken a leading part in all the great debates that have taken place in the Senate since his entrance therein, and as an orator and a lawyer he has no superior in that body. He is always listened to with the deepest interest by the Senate in every address that he makes, and speaks to crowded galleries upon every great debate that takes place there. The Senate always recognizes his high authority as a great constitutional lawyer. He is a member of the two choice committees of the Senate, the judiciary and the committee on foreign relations. It would prolong this sketch too much to enumerate the important questions that

he has discussed in the Senate, and the Congressional Record will have to be examined in order to do full justice to his career. The most important case, perhaps, that has been tried by Senator Rayner, is his famous defense of Admiral Schley before the court of inquiry at Washington, which gave him a reputation throughout the country possessed by very few American lawyers. Extracts from the speech of Senator Rayner on that occasion rang through the country, and cannot be forgotten.

Sudden Death of Mississippi Lawyer.

HONORABLE Charlton H. Alexander, a distinguished member of the Mississippi bar, died suddenly on May 15, under circumstances almost tragic. At the recent Democratic primaries he was chosen a delegate-at-large to the Baltimore convention. In the presidential primaries Honorable Oscar Underwood had carried the state over Honorable Woodrow Wilson by a large majority. Mr. Alexander had been a fellow student with Mr. Wilson at college, and was one of his devoted adherents. When Governor Earl Brewer, a fellow delegate-at-large, introduced a resolution in the state convention, instructing the Mississippi delegation to vote as a unit for Underwood, "first, last, and all the time," Mr. Alexander opposed the resolution. He was not disposed to disregard the presidential preference for Underwood, but insisted that he be allowed to use his discretion in voting for other candidates should Mr. Underwood's chances for the nomination appear to be weak after a few ballots had been taken.

In the bitter debate which followed Mr. Alexander became greatly excited, left the hall, and in a few moments was seen to collapse, and he expired before aid could reach him. His death caused a profound shock throughout the state. He had contested the senatorial election and been defeated by ex-Governor Vardaman only a short time ago.

Mr. Alexander was fifty-four years old.

As a lawyer, Mr. Alexander stood at the head of his profession; as a citizen he was loyal to every interest of his state; as a man he was above reproach; and as a true, conscientious Christian gentleman, without blemish.

Federal Judge Dies.

Judge Thomas J. Morris of the Federal District of Maryland, died at Baltimore, Md., of apoplexy, on June 6. Judge Morris was seventy-four years old. He had been a United States judge for thirty-three years.

Death of Judge Longstreet.

The state of Mississippi recently lost a noted citizen and lawyer by the death of Judge James Longstreet, of Jackson.

James Longstreet was born in Macon, Georgia, in 1857, the son of distinguished parents and closely related to the families of L. C. Q. Lamar and General E. C. Walthall. His home after coming to Mississippi was at Grenada, where he began the practise of law after graduation from the university, rising rapidly to the front ranks. In the early nineties he was appointed chancellor, but resigned during the middle of his term to return to the practise of his profession. A few years later he was appointed as district representative of the Illinois Central and Yazoo & Mississippi Valley railroads, as a member of the firm of Mayes & Longstreet.

As a lawyer he was considered strong, brilliant, studious, and logical, ranking high at the bar of Mississippi and other states.

Decease of Former Supreme Court Judge.

Judge James B. Gantt died at his home in Jefferson City on May 29th, ending a career of unusual brilliance as a lawyer and judge, twenty-six years of his life having been passed on the bench, six years as a circuit judge, and twenty years as a member of the Missouri supreme court.

Judge Gantt was as strong in his profession as he was pure in his private life. His standards were the highest. As a judge he was not only able, but efficient. The clearness of his mind, the extent of his erudition, and the integrity of his life, have left their impress upon the commonwealth, which more than once bestowed upon him the highest judicial honor within its gift.

Hon. Francis Tillou Nicholls

IN the passing of Francis Tillou Nicholls on January 4th, 1912, Louisiana lost her most illustrious citizen. As soldier, statesman, lawyer, jurist, and citizen, the career of Judge Nicholls is one of the most remarkable in the history of the country.

He was born at Donaldsonville, Louisiana, August 20th, 1834. He graduated with honor at West Point Military Academy, and served as brevet-lieutenant in Florida in the campaign against the Seminole Indians. Later he resigned from army service, graduated in law at Louisiana State University, and entered the practice at Napoleonville, Louisiana. At the breaking out of the Civil War, he enlisted in the 8th Louisiana Infantry, C. S. A., as captain, and was shortly afterwards promoted to lieutenant colonel. In the battle of Winchester he lost his left arm, was captured by the Federal soldiers, and later exchanged. When he recovered from this wound, he was promoted to colonel and later to brigadier general and commanded a Louisiana brigade in the Army of Northern Virginia. In the battle of Chancellorsville, his horse was shot from under him and he lost his left leg.

HON. FRANCIS T. NICHOLLS

At the close of the war he returned to Napoleonville and resumed his law practice. He participated in the overthrow of "carpet-bag" rule in Louisiana, and was elected governor in 1876, but the returning board declared his Republican opponent S. B. Packard elected. However, the white citizens of Louisiana determined that Nicholls should take his seat, and he was sworn in at the old St. Patrick's Hall, January 8, 1877. One of the first acts of President Hayes was to withdraw the Federal troops from the support of Packard, and recognize Nicholls as the lawfully elected governor. At the end of his term as governor, he again took up the practice of law, and was again elected governor in 1888. At the expiration of this term, he was appointed chief justice of the Supreme Court, served out his term of twelve years, and was then appointed one of the associate justices of the Supreme Court, and served until his increasing infirmities, the result largely of his old army wounds, compelled his retirement under the acts of the legislature providing for such contingencies.

No better summary of the qualities of Judge Nicholls could be made than that contained in the eloquent eulogy of United States Senator Murphy J. Foster, who said:

"As a private citizen his life was blameless, his example uplifting and ennobling.

"As a governor, no other man in Louisiana's history has shed so much luster upon the executive office.

"As chief justice on the bench of the state's highest judicial tribunal, his inherent love of justice and his profound knowledge of our law met and blended with his marvelous human sympathy, and these, combined with an extraordinary endowment of common sense and clear discernment, made him the ideal judge."

Ohio's Senator

IN 1886 a young man of sterling character and worth located at Canton, Ohio, and engaged in the practice of law. He had laid deeply and well the foundations of professional success. He was a graduate of Princeton College and of the Cincinnati Law School. His outlook on life was broadly humanitarian. He took an active interest in the affairs of the community. He believed in the people and in their right to rule. This man was Atlee Pomerene, now junior Senator from the state of Ohio. Honors and responsibilities soon came to him. For four years he served as city solicitor. In 1896, during the first McKinley campaign, he was elected prosecuting attorney, being the only successful candidate of his party in Stark county in that year. His administration of this office was highly creditable, and added greatly to his reputation as a trial lawyer.

HON. ATLEE POMERENE

In 1906 Governor Harris appointed him a member of the tax commission of Ohio, whose duty it was to formulate and report a plan for the improvement of the Ohio tax laws. The value of his work as a member of this body was widely recognized.

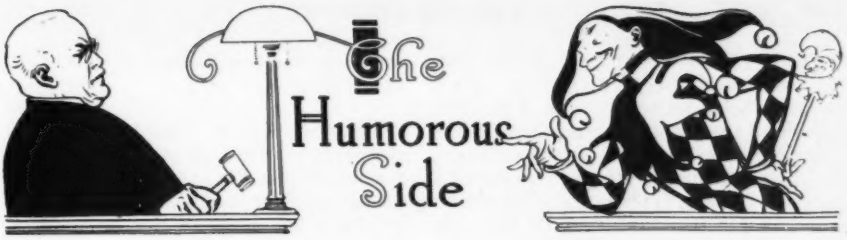
The lieutenant governorship of the state was conferred upon him in November, 1910, and in the following January the general assembly chose him United States Senator. In this position he has already rendered distinguished service. As a member of the committee on interstate commerce he took a prominent part in the investigation relating to the control of corporations, persons, and firms engaged in interstate commerce. Both Ohio and the nation have reason to expect much from Senator Pomerene.

We cannot refrain from alluding to an amusing incident which discloses the Senator as a friend in need. Recently Vice President Sherman sent a page on the Senate floor to ask Senator Pomerene to come up and speak to him. When the Ohioan arrived at the desk, the vice president looked at him pathetically, and said: "Senator, I called you to ask if you would mind presiding over the Senate this afternoon; my grandmother is very ill." "Indeed! What is her temperature?" asked Senator Pomerene, sympathetically. "Yesterday it was 3 to 1," responded the vice president.

Then he stepped down and made a bee line for the bleachers, leaving the Senator holding the bag.

Legal Author Honored.

We are pleased to note that the degree of LL.D. has been conferred upon Mr. Virgil M. Harris by the St. Louis University Institute of Law. Mr. Harris is the author of the recent work entitled "Ancient, Curious, and Famous Wills." He is an expert on the Law of Wills, and has written and spoken most acceptably on the subject.



'Twere better that the world a laugh should hear, than bitter tale of woe!—*Paine.*

Could Not Deny It. "I will ask you," said the lawyer, who was trying to throw doubts on the testimony of a witness, "if you have ever been indicted for any offense against the law?"

"I never have, sir."

"Have you ever been arrested on a charge of any kind?"

"Never."

"Well, have you ever been suspected of committing a crime?"

"I'd rather not answer that question."

"Ha! You would rather not. I thought so. I insist upon your answering it. Have you ever been suspected of crime?"

"Yes, sir; often. Every time I come home from a trip abroad the customs inspectors at New York city suspect me of being a smuggler."—Chicago Tribune.

Deadly Weapons. In examining prospective jurors for a murder trial in the general sessions court of New York, counsel for the accused said to one of the prospective jurymen: "This indictment accuses the defendant of killing the deceased with premeditation and deliberation. What do you understand by that?" "Who, me?" replied the talesman. "If you please," said the lawyer. "Why," answered the man, "them's the weapons he done the killing with."

A Purist. Having been cautioned by the prosecuting attorney not to let the counsel for defendant trick him into altering his testimony, the old negro on the witness stand braced himself grimly for the ordeal of cross-examination. He had just detailed on direct examination how he had seen the prisoner murder his victim, throw away his razor, and flee from the scene.

"You say you saw this man drop his razor and run away?" demanded counsel for defendant in challenging tone.

"No, suh, Ah nevah said dat," declared the witness.

The attorney consulted his notes a moment, then turned fiercely on the witness again.

"Do you mean to tell this court and jury," he thundered, "that you did not say a few minutes ago that you saw this defendant throw down his razor and run away?"

"No, sur, Ah nevah did," insisted the old man stubbornly. "An' no lawyah can make me say somethin' Ah knows I didn't say."

"Well, what did you say?" demanded the exasperated counsel.

"Ah nevah said Ah saw him," responded the old darkey slowly, with dignity. "Ah said Ah seen him!"

Too Busy. Notary—Sign your name here, Uncle Rastus.

Uncle Rastus—Ah doesn't write ma name, suh. Ah has no time fuh dem triflin' details o' business. Ah allus dictates ma name, sur.—Cleveland Leader.

She Did Not Know. A local justice of the peace was about to perform the marriage ceremony for a colored couple who called at his office for the purpose. Previous to the performance of the "official act" the justice proceeded to ask the usual questions of the prospective groom as to his father's Christian name and his mother's maiden name, whereupon the future bride chimed in with this remark:

"You all better not ask me what my father's maiden name is, 'cause I don't know!"—National Monthly.

True Worth. Visitor—I came all the way from the city to consult your lawyer Jones here. He's a good man, isn't he?

Uncle Eben—Nope; we don't consider him one, two, three, with Smith. Why, Smith's been intrusted with the local agency of the Knott Knitting Needle, the dispensing of Daggett's Drugless Dope, and the demonstrating of Fasset's Fireless Cooker. That not only shows that he's got the confidence of such big fellows as them, but he don't have to depend on his law hardly at all to make a living.—Lippincott's.

An Incongruity. Little Alick—What is an incongruity, uncle?

Uncle William—An incongruity, child, is a divorce lawyer humming a wedding march.—Satire.

Too Expensive. 'Ras Jones was a witness at a trial in the courthouse last week. He was testifying as to a conversation he had on the phone with the defendant in a civil suit. "Did you call him up on your own initiative?" the lawyer asked 'Ras. "No," says 'Ras, "I used the one in the general store. I can't afford one myself."

Of Secondary Importance. "Are you interested in the recall?" "Not yet," replied the habitual candidate. "What I am interested in is a means of getting somewhere in the first place."—Washington Star.

Suspicious. Lawyer's Office Boy (excitedly).—What dy'e think, kid? De boss just gimme a grand-stand ticket fer de ball game dis atternoon!

Broker's Office Boy—Gee! What have youse got on him?—Denver News.

Couldn't Be Bribed. "Did the prisoner offer any resistance?"

"Only a dollar, your honor, and I wouldn't take it."—Minneapolis Journal.

Lapsus Linguæ. Lawyer: "My client painted a picture of this young lady, your Honor, and she claims it does not do her justice."

Judge—"Does not do her justice did you say?"

"Yes, your Honor; and she was foolish enough to think she could get it by bringing the case before you!"—Yonkers Statesman.

His Abusive Eyes. Aunt Caroline and the partner of her woes evidently found connubial bliss a misnomer, for the sounds of war were often heard down in the little cabin in the hollow. Finally the pair were hailed into court, and the dusky lady entered a charge of abusive language against her spouse. The judge, who had known them both all his life, endeavored to pour oil on the troubled waters.

"What did he say to you, Caroline?" he asked.

"Why, Jedge, I jes' cain't tell you all dat man do say to me."

"Does he ever use hard language?"

"Does yo' mean cussin'? Yassuh, not wif his mouf, but he's always givin' me dem cussory glances."—Lippincott's Magazine.

A Hair-Raising Contest. Curtis Guild, former governor of Massachusetts, was once asked for the funniest story he ever heard. This is the story he told:

"An Irishman and a Jew were discussing the great men who had belonged to each race, and, as may be expected, got into a heated argument. Finally the Irishman said:

" 'Ikey, listen. For ivery great Jew ye can name ye may pull out one of me whiskers, an' for ivery great Irishman I can name I'll pull one of yours. Is it a go?'

"They consented, and Pat reached over, got hold of a whisker and said, 'Robert Emmet,' and pulled.

" 'Moses!' said the Jew, and pulled one of Pat's tenderest.

" 'Dan O'Connell,' said Pat, and took another.

" 'Abraham,' said Ikey, helping himself again.

" 'Patrick Henry,' returned Pat, with a vicious yank.

" 'The twelve apostles,' said the Jew, taking a handful of whiskers.

"Pat emitted a roar of pain, grasped the Jew's beard and yelled, 'The Ancient Order of Hibernians!' "—Cosmopolitan Magazine.